Supreme Court, U.S.
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No.

In the

SUPREME COURT OF THE UNITED STATES

BRENDA E. TREMBLE,
Petitioner

v.

BULLOCH COUNTY SCHOOL DISTRICT
LYNN BATTEN
EUGENE NATSON, JR.
SHIRLEY COBB
BRENDA SHUMAN RILEY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether Eleventh Circuit Court of Appeals has entered a decision that conflicts with *National Railroad Passenger Corp. v. Morgan, 536* U.S. 101 *(2002)* on governing standards for district court to follow in consideration of summary judgment motion on hostile or abusive work environment claim, as to call for an exercise of this Court's supervisory power.

II. Whether Eleventh Circuit Court of Appeals has entered a decision that conflicts with *Board of Regents v. Roth, 408* U.S. *564* (1972) on governing standards for district court to follow in consideration of summary judgment on Fourteenth Amendment due process claim, as to call for an exercise of this Court's supervisory power.

IV. Whether court of appeals required to state reasoning for granting FRAP 38 sanctions when district court itself denied Rule 11 sanctions.

PARTIES TO THE PROCEEDING

Petitioner is Brenda E. Tremble.

Respondents are Bulloch County, Bulloch County School District, Lynn Batten, Eugene Natson, Jr., Shirley Cobb, and Brenda Shuman-Riley.

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OPINIONS BELOW

The Eleventh Circuit's Per Curiam opinion is unreported (Pet. App.2). The District Court's Final Order (Pet. App. 5) is unreported. The order of the Eleventh Circuit denying the petition for rehearing and for rehearing en banc (Pet. App. 4) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 24, 2004. A timely petition for rehearing and for rehearing en banc was denied on February 4, 2005. The jurisdiction of this court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 2000e-5(e)(1)

STATEMENT OF THE CASE

i. Facts

1. Brenda E. Tremble worked for Bulloch County School District ("BCSD") from 1994 until February 2001. First

Amended Complaint of Brenda Tremble ("Tremble Complaint"), Civil Docket ("CD") No. 10 at 2.[1]

2. In May of 1999, Tremble felt her job might be in jeopardy in the near future and for the first time went to Eugene Natson, Jr. ("Natson") to discuss her questions, concerns or complaints about her principal, Brenda Shuman-Riley, which concerns accumulated over the 1998-1999 school year, CD No. 98 at 2. Natson is also an African American male and, at all times relevant to this lawsuit, is the BCSD Assistant Superintendent for Personnel, CD No. 10 at 3 and the BCSD official designated to address questions, concerns or complaints relating to nondiscrimination policies and practices of BCSD, CD No. 111 at Exhibits 75, 76, and 77. Riley is a white female and the former principal at the Sallie Zetterower Elementary School, CD No. 10 at 3.

3. During the pre-planning period for the school year 1998-1999, Tremble was caught by surprise when Riley, the new principal, called her into office and after Tremble answered Riley's questions about instructional materials, Riley suddenly appointed Tremble as the Grade Representative for the First Grade teachers, CD No. 98 at 2. Although Tremble was pleased to have the opportunity, she was concerned about the manner in which Riley made the appointment without giving her a choice, CD No. 98 at 2.

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[1] Whenever an affidavit or deposition or other documentary evidence is referenced, it refers to affidavit or deposition or documentary evidence filed in the District Court in Opposition to defendants-appellees' Motion for Summary Judgment. The initial numbers refer to the Civil Docket. Page numbers are to the actual pages in the document, except where document included in the Petition Appendix the reference is to Appendix page number.

During the first visit with Natson, Tremble discussed this lack of choice with him.

4. During this same preplanning period, Riley called a meeting with the people that had gone to the Reading First Training; Riley told them that they would be the Reading First committee, and passed out a prepared committee list showing Tremble as the chairperson, and suddenly, Tremble was totally responsible for the Reading First program, a new project for the school, CD No. 98 at 2, 3, 10, 11, 12, 13, 14. Although Tremble saw this appointment as an opportunity to display more of her capability, she felt she was being intentionally overburdened and did not want this to become a pattern where she would always be saddled with what she thought was part of the Principal's job being shifted to her unfairly, CD No. 98 at 3. Tremble discussed this concern with Natson at the first meeting. Riley had instructed Tremble attend the first BCSD Reading First meeting of project directors; at the meeting Tremble observed that all the other project directors were principals; and upon returning to the school, Tremble reported this information to Riley so Riley could pull her from that major position, but instead, Riley instructed her to continue as the Reading First chairperson, and Tremble discussed this concern with Natson, CD No. 98 at 3, 12, 13.

5. Tremble worked very hard to successfully implement all aspects of the Reading First program; when it came time for the State of Georgia Reading Program Monitor to visit the school and review progress, Tremble was excited about her success and looking forward to meeting the Monitor; Riley asked Tremble to prepare her for the Monitor's visit, which Tremble did; on the day of the Monitor's visit, Riley did not bring the Monitor to Tremble and told Tremble the Monitor came by her room during recess; one of Tremble's white coworker remarked to Tremble, "Looks like you got

all dressed up for nothing!" Tremble felt highly embarrassed, humiliated, and used by Riley, and Tremble discussed this concern with Natson at the first meeting, CD No. 98 at 4, 5, 15.

6. One day Tremble got permission to go over to another school to visit her goddaughter's teacher, Tracey Vickery, a white female who is married to the son of Natson's secretary; Tremble taught her goddaughter in the First Grade the previous school year; Tremble recalled having a congenial and productive meeting, no exchange of harsh words, insults, or any other negative language that would indicate hostility by either of them; Riley told Tremble that Vickery's husband said he was going to file harassment charges against hers and verbally reprimanded her; Tremble wanted to know from Natson during this first meeting whether harassment charges had been filed against her; and, at that time, he reassured her that there was no basis for anyone to file such a complaint. CD No. 98 at 5,6, 16, 17, 18.

7. Tremble was also concerned about a student disciplinary matter involving a racially mixed child who Riley instructed Tremble to deviate from the approved grade-level disciplinary plan when he misbehaved in the classroom; the student was seen on the playground during recess with a real-looking toy gun and Riley reprimanded Tremble when Tremble was not on duty during recess; the white paraprofessional who was on duty, Riley did not approach her at all; and Tremble discussed this concern with Natson during the first meeting. CD No. 98 at 6, 18, 19, 20.

8. Tremble also complained to Natson about Riley wanting her to present a summary report of the Reading First program at a faculty meeting, which required a lot of preparation, and after doing so, the very next day, Riley told

Tremble that Shirley Cobb, a white female and the Assistant Principal, who also had attended the Reading First training with Tremble, CD No. 98 at 7, 10, 11, 12.

9. During this first meeting in May of 1999, Tremble did not use the specific words to Natson that she felt she was being mistreated because of her race, but she felt he knew what she meant from the context of their entire conversation. CD No. 98 at 8. On two separate occasions, the first being at Natson's suggestion, Tremble contacted Donnie Simmons, an African American male and a local civil rights activist who later became a BCSD school board member, CD No. 98 at 8; Pet. App. at 38.

10. After Tremble explained all of the above concerns about Riley to Natson during their first meeting in May of 1999, he assured her that she had legitimate concerns, and that he wanted the three of them to meet in his office to discuss her concerns openly, but the meeting never took place; Natson changed his mind and agreed with Riley to allow Riley to talk to Tremble alone at the school; Natson did not consult with Tremble before making this agreement with Riley; CD No. 98 at 9; Tremble felt scared and unprotected, and the meeting with Riley did not go well: Tremble told Riley her concerns and Riley told her, "I can be warm and friendly with my family at home. I don't have [to] be warm and friendly with you at school"; Tremble felt Natson set her up to be a target. CD No. 98 at 8, 9, 27.

11. Conflicts increased in frequency. During school year 1999/2000 preplanning period, Riley stormed into Tremble's classroom, in the presence of paraprofessionals ('para-pros") and said in a rude manner, "You understand that we are sharing the para-pros!" Tremble was embarrassed; CD No. 98 at 28. Prior to this occasion, Tremble asked her personal friend Tara Kirkland, who is a student volunteer during

regular school year, to make a special trip to the school to help her get her classroom together for the new year; Riley would not have known in advance of Kirkland's arrival, as there was no sign-in sheet at this point for visitors; Riley removed Kirkland from her classroom. CD 98 No. 29. Tremble observed Riley appeared not to condone blacks working together in the classroom; about week after the Kirkland incident, Riley switched the para-pros around so that all the black teachers had white para-pros, but all white teachers did not have black para-pros; CD No. 98 at 30.

12. Riley used a variety of ways to undermine Tremble. Tremble earned her Master's Degree during Riley's administration; Tremble was the only black teacher to have earned a Master Degree, but Riley did not congratulate her in the same manner as she did in the past with the white teachers; when Riley acknowledged white teachers, she elaborated with such praise that the teachers beamed with pride and were further congratulated by rest of the faculty; for Tremble, instead of acknowledging the achievement, Riley merely emphasized her Master's project at a faculty meeting by saying it would be available for use in the resource room, but Riley failed to make it available and returned it to Tremble's mailbox, CD No. 98 at 31. It was after this occasion that Tremble ran into Natson at the Board of Education, on unrelated business, when Natson saw her and asked her how things were going; Tremble indicated to him that the work environment had not improved; Natson told Tremble that he could tell Riley was not going to respect him as her black administrator; CD No. 98 at 31.

13. Riley witnessed Cathy Deal, Tremble's new white para-pro, crying (Deal had recently returned from hysterectomy surgery and was very hormonal), and Deal told that she did not know if she was doing her job right; Riley called Tremble into her office to question her about Deal;

this was the first time Tremble was aware Deal felt she did not know what to do, but as far as Tremble was concerned, she felt Deal was doing a good job; Tremble had a notebook that stated what Deal needed to do each day; Tremble told Riley that if anyone should be crying it should be her because Deal defaced her wedding picture on her desk by putting "devil" horns on her head; Deal admitted to doing this and said it was a practical joke; subsequently Riley apparently called Natson who called the school for Tremble to stop by his office in reference to a comment that Riley made about Deal; Natson was told by Riley that Tremble had a problem with Deal when she didn't CD No. 98 at 33.

14. On another occasion, Deal noticed a student was eating sweets only for lunch; she informed Tremble who wrote a note to student's mother; the mother previously had asked Tremble to keep her abreast of any changes with her son due to his ADHD; studies show that diet may trigger adverse behavior in children. CD No. 111 [Ex 24 ADHD/Diet]; the mother overreacted to Tremble's note, wrote a lengthy letter to Riley, had her son's doctor to write a note; despite BCSD policy that instructs schools to monitor what students eat, Riley chastised Tremble because she mentioned the fact that Riley monitors the lunchroom. CD No. 98 at 33. Shirley Cobb, a white female and the Assistant Principal, testified that teachers should be concerned about students' eating habits, CD No. 101 at 57, and the teacher is expected to make an informal communication with the parent, such as sending a brief note, CD No. 101 at 58.

15. During school year 1999-2000, Tremble was called into the office with both principals; Riley explained to Tremble that she would be moving to second grade for coming school year 2000/2001; Tremble would now be located on same hall with Dr. Riley; while Tremble hoped things would get better, they did not; Tremble was not told

about Second Grade teachers meeting to upcoming students and how to distribute them; as a result Tremble was given a larger share of low achieving students with behavior problems than the other teachers; Riley participated in this meeting. CD No. 98 at 33. Although Tremble was not the only teacher moved to a new grade level, white teacher Janice Wilson was moved from second grade to first grade; Riley handled the situation differently with Wilson; Riley first asked Wilson if she would mind being the one to switch from second to first; Riley also told Wilson that she wanted some cross grade level working the following year; Wilson was stressed because she was familiar with what she was doing. CD No. 106 at 31. Riley testified that the reason she changed Tremble's grade level was to implement vertical alignment of curriculum for school improvement. CD No. 108 at 138; Riley did not inform Tremble of anything about vertical alignment of curriculum when she met with Tremble about grade change. CD No. 98 at 34. There was no effort by Riley to coordinate any curriculum instruction vertically throughout the school or otherwise; the faculty received no literature from Riley indicating the new teaching strategy. CD No. 98 at 34; Riley did not inform parents of anything about vertical alignment, CD 98 at 35.

16. Riley attempted to designate Tremble as the EIP teacher, a program for low-achieving students. CD No. 98 at 36; School Board Policy requires consideration of the appropriateness of teachers' assignments because of the "significant impact on the morale of the professional staff and the effectiveness of the total educational program," CD No. 111 at Ex 85. It is commonly known in the teaching community that if a principal wants to get rid of a teacher all the principal has to do is make that teacher feel so unwanted and uncomfortable that the teacher would either leave or get fired, and this is what Tremble believes Riley and Natson were doing to her. CD No. 98 at 36. As a result of the

ongoing harassment continuing into school year 2000-2001, Tremble went to Natson to requested a transfer to another school, to get away from Riley; Natson found one possibility at Stilson, but Tremble could not accept it because of the distance from home, and the affect it would have on her family. CD No. [Plaintiff's Dep.]-47.

17. For the 2000-2001 school year, Tremble noticed on the committee list that Riley had her listed to serve on only one committee, the Arbor Day/playground/grounds committee; Tremble had a problem with this assignment because Riley had told the faculty at end of the 1999-2000 school years that she wanted every teacher on the curriculum areas committees that taught reading and math or science, social studies, and health. CD No. 98 at 37; Tremble took the matter to Riley and asked her if she could be utilized on another committee in addition to the Arbor Day committee, and Riley said emphatically, "No, that's all I want you to do is plant a tree"; after that, Riley never looked at Tremble again; Tremble walked out of her office, back to her room, and cried. As a black American, Tremble felt Riley was telling her that she belonged outside working in the fields picking cotton. CD No. 98 at 37.

18. About two weeks into the 2000-2001 year, Tremble went to Riley to discuss the lack of balance in her classroom; although Tremble had only two white female due to students that never showed up, she was more concerned about academic balance instead of racial balance at that time; Riley told Tremble that her class was just as balanced as the other second grade teachers; Tremble knew that was not true because she knew the students from the first grade; white teacher Diane Harrell had noticed the imbalance as well and stated to Tremble, "Your highs do not compare to their [the other 2nd grade teachers] highs"; Harrell is the extension teacher who teaches science, social studies and health to all

second graders and was in the position to see the differences between the classes. CD No. 98 at 38.

19. Unexplained incidences happened with Tremble's attendance records not being picked up like the white teachers; on August 20, 2000, Riley told Tremble that she was holding up the office from doing the attendance; Tremble returned to her classroom and saw her attendance record was still sitting the tray on her door and not, again, been picked up. CD No. 98 at 39.

20. On August 28, 2000, Riley wrote a note to Tremble stating Tremble needed to have reading levels in her students AR folders before sending them to the library; Tremble went to white librarian Joanne Newland to see what Tremble had done wrong that required Newland to go to Riley; Newland informed Tremble that Riley was standing there when one of her students happened to be checking out a book and saw no check was in the folder; Tremble went to for clarification, and Riley said to Tremble, "I have staff designated to tell me things"; at that point, Tremble told Riley about her conversation with Newland and Riley look shocked and displeased that Tremble knew she was not telling the truth; it was the word "designated" that bothered Tremble; it made her nervous; and she felt like she was walking on eggshells every day. CD No. 98 at 39, 40. Feeling insecure about how Riley was responding to her, Tremble went to see Simmons, who was, at that time, the president of the NAACP; they talked about Tremble's class profile, Riley, and other similar situations that he had encountered with the school system; Simmons told Tremble that he would go and talk with Riley if she would provide him with some documentation; she asked him what would he say to her, and he said that he would remind her that slavery was over and that she needed to back off of her. CD No. 98 at 40.

21. One of Tremble's white female students moved from area around September 5, 2000; a few days later one of her black female students transferred as well; Tremble now knew for sure her class was not balanced racially, academically or by gender. CD No. 98 at 40. A disciplinary problem occurred with the remaining white female student and her mother met with Riley on September 15, 2000; Tremble wanted to meet with the mother but she did not return to her classroom, as the mother said she would; Riley called Tremble into her office and said the parent had some concern about the student's accelerated readers log; Tremble attempted to explain and offer to do whatever she could to make the parent and Riley happy; she told Riley, "I was going to talk to the mother, but she didn't come back to the room. I'll erase any tests that she didn't do well on and start over again. I'll try to do a better job of checking her folder, reading range, and the computer to make sure that she can feel more successful at A.R"; Riley admonished Tremble by saying, "I want you to make sure E. [name redacted] is happy"; Tremble questioned what Riley meant by this; Tremble felt uncomfortable and said to Riley "What if I can't make her happy by your definition or her mother's definition of happiness no matter what I do? Dr. Riley, what if something else comes up?" (this was the third time this same student's mother had to be notified of a discipline problem); Tremble felt Riley was coercing her to break policy; Tremble could not understand where Riley was going with this conversation and she ended in tears. Tremble reminded Riley that she promised to do something about the imbalance in her classroom by September 8, 2000; thinking that this imbalance was against policy and that another school had undergone a similar situation that was dealt with by NAACP, Tremble said to Riley, "I will not lie for you. If a board member or anyone else recognizes that my class has one white female, I will not be able to cover for you." CD No. 98 at 41, 42, 43.

22. Mrs. Tremble went to Natson's office; he listened and agreed with Tremble that the student could not be the only white female in her class and that Dr. Riley should have known better because of incidents at the other school; Tremble told Natson that she was scared; he assured her that everything would be ok, to have a good weekend; as Tremble was leaving Natson's office, Riley was waiting to see Natson herself; that is as close as the three of them ever got to being in Natson's office at the same time, CD No. 98 at 43, 44.

23. Upon returning to school to gather her things, Harrell volunteered the following information: "The only student that we got together on to put in your class was J. Raymond [a black repeater in second grade]." This was the meeting that Tremble was not informed about. Harrell also stated, "we thought that he would benefit more by having a black teacher." CD No. 98 at 44.

24. On September 22, 2000, Tremble took half-day leave; upon her return, Jean Howard, a white substitute teacher, told Tremble that, "Dr. Dr. Riley came into your room and searched inside your desk. I think she left out with your report cards." Howard never mentioned that she had to help Riley in any way whatsoever and Riley had already seen them once before and Tremble knew that she had one very minor correction to make. Riley saw Tremble that same day and never mentioned that she had gotten them. Tremble became alarmed and nervous. This was totally out of character for Riley to go into a teacher's desk. Riley stated she needed to obtain information concerning a student's attendance report or academic achievement at the parent's request CD No. 71 at 4, but Sallie Zetterower keeps special attendance records and academic achievement records that are kept in the office on separate forms. CD No. 98 at 45.

25. Scared because Riley did not voluntarily tell her about searching her desk, Tremble called Natson on September 23, 2001 at his home; Tremble was thinking that Riley might be trying to set her up to get her fired, such as planting drugs or something in her desk; Natson assured Tremble that Riley was under "monitoring" and that Tremble had nothing to worry about. CD No. 98 at 45. Natson testified that he did follow up on this matter with Riley. CD No. 109 at 78; Riley did not remember Natson ever addressing that matter with her. CD No. 108 at 181. From this point on, Riley never spoke with Tremble privately, always including assistant principal Cobb. CD No. 98 at 46; a white teacher, Kathy Deloach, had meetings with Riley, but never one where both Riley and the assistant principal were present. CD No. 123 at 67.

26. Riley said that she couldn't figure out any other way to fix the imbalance in Tremble's class except to move the student to Bennett's class; Riley said they had been working on this all along, but couldn't find a way to fix the problem; the next day Riley moved the student to Bennett's class. CD No. 98 at 47. The white teachers had enough white female students that Riley could have moved one of them into Tremble's class, but chose not to do so. CD No. 133 at 177). Natson testified Riley had the option to move a white female from a white teacher's class to Tremble's class. CD No. 109-167.

27. Mrs. Tremble used her Early Pass to leave for a Doctor's appointment November 21, 2000. Before leaving, she could not find either principal to get her Early Pass pre-approved, so the school white secretary Diane Long told Tremble to go on to her doctor's appointment and that she would give the early pass to Riley. Upon returning to school, Tremble checked her mailbox and found a note from Riley stating that she had to turn in an additional early pass since

she didn't get the first one preapproved. Dr. Riley had not notified the faculty of any special procedures other than what she put on the "Early Pass". Subsequent to this incident, white teacher Anita Hill told Tremble that she had a similar situation, that Riley did not require her to turn in an additional pass but she went ahead and did it anyway. CD No. 98 at 47, 48. Hill testified if Riley was not available, teachers put the Early Pass in her box. CD No. 104 at 60.

28. In November 2000 during unrelated visit to school board office, Natson stopped Tremble when he saw her to see how things were going at work; she told him about the Early Pass incident and he said, "Good, your statement sent out a strong message." CD No. 98 at 48.

29. In November 2000 during a teacher leadership meeting, Tremble was told white teacher Kathy Deloach came down hard on Riley about her class profile. Deloach previously had approached Tremble and asked her about how her class imbalance issue was resolved. CD No. 98 at 49. Deloach could not recall this conversation; however, she was one of the witnesses coached by the defendants before and after witnesses were noticed to have deposition taken, as testified to by former white parapro, Gene Herrington. CD No. 102 at 7, 9. Before the Christmas break, Riley announced Deloach would be the new Quest teacher (gifted program) after the Christmas holidays.

30. Tremble's son wanted to take his new miniature puppy to class for share time; his white teacher, Deanne Page, had been asking Tremble to let him bring the puppy on share day and he did on February 2, 2001; Page was absent and white substitute teacher Dixon told Tremble he could still share his puppy. Tremble informed assistant principal Cobb about the puppy and Cobb, an avid animal lover, went to see the puppy; Dixon returned the puppy two hours later

to Tremble and told Tremble Cobb came over to pet the puppy and that Cobb was a good dog sitter. It was time for recess duty and before going to recess duty, Tremble told Harrell, her recess duty partner that she was taking the puppy over to Cobb's office and would meet her on the playground. Cobb willingly kept the puppy, and when recess was over, Tremble used her bathroom time to go back and pick the puppy up; Cobb had told Tremble she could leave the puppy until lunchtime, which was only 30 minutes away; Tremble also told Cobb she would take the puppy home on her lunch break if it were okay with her; Cobb gave her approval. CD No. 98 at 49, 50.

31. At some point during recess, a fight occurred; Harrell and Tremble wrote discipline report and gave it to Cobb, who was not pleased when she received the referrals; Cobb made a statement to Tremble that implied Riley would not be in a good mood once she sees all the referrals that she had in her hand; upon Riley's return to school on February 6, 2001 after her absence on February 2, 2001, and in keeping with her previous pattern, Riley over the school intercom summoned Tremble to her office shortly after Tremble got to work. CD No. 98 at 49, 50. Hill testified remarking to Tremble, "Well, what is it now? You just got here. You couldn't have done anything wrong already. What is it now?" CD No. 133 at 220. Upon arriving to Riley's office, Riley told Tremble to have a seat to wait for Cobb's arrival; after Cobb's arrival, Riley proceeded to reprimand Tremble; Cobb did not step up to the plate and defend Tremble in any way; Tremble found herself trying to justify the reason she was trying to be a good parent; Riley proceeded to link the puppy to the fighting incident that occurred on February 2nd; she told Tremble, "I heard you had a dog at school when the teacher wasn't here and that the fighting took place while you were tending to your dog." Tremble attempted to explain, but Riley said, "You are not to bring a dog to school without

asking me first." Tremble expected support from Cobb, but got none. The parent handbook did not state a parent has to check with the principal before bringing a caged pet to school. CD No. 98 at 49, 50, 51; Natson in his EEOC position statement clearly stated BCSD had no such policy. CD No. 111 at Ex 97. It was clear to Tremble that Riley was not concern about conducting an objective investigation, as Riley never asked Tremble any objective question about the events of February 2nd. Tremble felt like a child instead of a thirty-six year old woman; feeling sick and betrayed inside, Tremble simply said, "I'm sorry. My son just wanted to share his puppy for share day. I didn't know that Mrs. Page wasn't here." Upon returning to her class, Tremble started to cry in front of her students, her son, a second grade teacher, and a white parent volunteer, Michelle Cawthorn-Chandler; the students were upset seeing Tremble crying; Tremble felt sick and buzzed the office for a substitute; the white second grade teachers said to Tremble, "you're a parent and you haven't done anything that any other parent would do for their own child" and Cawthorn-Chandler said, "I bring animals all the time and I never check with the principals." Mrs. Margaret Klutz, a white third grade teacher, came through Mrs. Tremble's room when the incident happened on February 6, 2001, and expressed that she brought animals regularly and she never asked either principal. CD No. 98 at 54. Mrs. Klutz testified differently during her deposition. CD No. 105 at 28).

32. Mrs. Tremble left school feeling torn apart and confused. Mrs. Tremble went to the county office to talk to anyone in sight: " I'm crying and shaking" and again, "I ended up talking to Mr. Natson for the third time concerning Dr. Riley" CD No. 98 at 52. Natson spotted Tremble walking and crying, obviously very distraught; Natson approached her and Tremble told him what happened at school; Tremble told Natson that she had been treated

harshly; but, he still did not view what Tremble said as a complaint. CD No. 109 at 83, 84, 85; to "This time he [Mr. Natson] suggested that I write her a letter because he's trying to get her to understand how she makes people feel." CD No. 98 at 52; Natson believes he told Tremble to write the letter on another occasion. CD No. 109 at 87; but Natson concluded that whatever got Tremble upset it happened out of the meeting between her, Riley, Cobb CD No. 109 at 89.

33. Natson did not offer to seek medical help or a panel of physicians for Tremble CD No. 109 at 87, 88, 89, 90, 91; Tremble left the Board of Education to seek medical attention, as she began to have chest pains, CD No. 98 at 53. In between medical tests the same day, Tremble went back to school to pick up her son; Harrell came to Tremble and reassured Tremble of two things: that Tremble was out to recess duty when the fight took place and that Tremble was tending to the student that had thrown the rock when the other student came up to Harrell crying about some boys fighting him. Harrell told Tremble, "I'll go and tell Dr. Riley the facts if you think it will help" and she did. CD No. 98 at 53; CD No. 121 at 78.

34. Tremble returned to school and attempted to work February 7th-9th, but could not cope with what she perceived as a complete disregard of her as a person by Cobb and Riley, when neither of them would say anything to her, no apologies, no hello, just nothing. Tremble felt especially intimidated when on that same day, the 7th, both principals were walking down the breeze way walking in such a manner that Tremble had to step to the side to keep them from hitting her as they passed. Mrs. Tremble was feeling scared and sick. CD No. 98 at 53, 54.

35. White teacher Janice Wilson informed Tremble on Feb.7th that she brought two puppies to school that spent the

entire day in the production room that is directly across from the Riley's office, CD No. 98 at 54.

36. Gene Herrington, Tremble's white parapro, testified she was very critical of Tremble and complained to Riley about Tremble's absences during 1998/1999 school years, when Riley had Tremble doing Reading First Project Director duties. CD No., 102 at 45, 46; Tremble sensed Herrington was going behind her back complaining, because Riley would come to her classroom looking at her in a suspicious manner. CD No. 98 at 54.

37. Tremble's husband called Lynn Batten on February 12, 2001 to discuss his concerns about his wife's situation. CD No. 98 at 54. Batten denied knowing anything about Tremble's problems with Dr. Riley, CD No. 98 at 54, but Riley communicated with Batten on September 9, 2000 regarding Mrs. Tremble's classroom balance issue. Pet. App. at 71 (R6-111 [Att. B, Ex 46]); Riley had conference with Batten on April 9, 2001 regarding Tremble. Pet. App. at 72 (R6-111 [Att. B, Ex 47]; Riley had conference with Batten on April 23, 2001 regarding Tremble. Pet. App. at 73 (R6-111 [Att. B, Ex 48].

38. Tremble made a second visit to Donnie Simmons on February 12, 2001; sick and confused, Tremble went to Simmons' house with hopes that he could help her, CD No. 98 at 55; Simmons was not available and Tremble left a document for him; all Simmons could recall was his wife bringing Tremble to his attention saying, "You don't remember a lady coming by and saying something about a dog? And I said what was my reply? And she said I was in the middle of that OCR thing, and you said I really don't have time to fool with no damn dog." CD No. 100 at 60.

39. Tremble never observed Riley disrespect white teachers, CD No. 98 at 55; Tremble observed white teachers agree with Riley and complain about her, but Riley did not remove them from their leadership roles, CD No. 98 at 55. There were white teachers who had low ITBS test scores and they were not told to stay in their classroom. DC No. 98 at 55.

40. Batten received Tremble's Grievance on September 25, 2001; Batten responded October 2, 2001: "I am writing to notify you that your grievance was not filed in a timely manner or in accordance with proper procedures, therefore, will not be processed" Pet. App. 74 [(R1-33-[Ex C]. Tremble appealed to Batten in her October 8, 2001 letter; Pet. App. 75 [(R1-35-[Ex B]; Batten denied Tremble's appeal in his letter October 11, 2001. Pet. App. 87 [(R1-35-[Ex C]; Tremble replied October 13, 2001, indicating Batten neglected in his October 2nd letter to tell her what the procedures were, and Natson failed to inform her of grievance procedures on February 6, 2001. Pet. App. 88 [(R1-35-[Ex D].

41. Tremble's BCSD contract of employment states, "The terms and conditions of this contract are made expressly subject to provisions of the Constitution and the laws of the State of Georgia," Pet. App. 30 (R6-111 [Ex 51 Excerpt D 0176]).

ii. Basis for District Court's Jurisdiction

42. This is an action for employment discrimination, retaliation, deprivation of federally-protected rights, and related tortious conduct in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); 42 U.S.C. § 1981 ("Section 1981"); 42 U.S.C. § 1983 ("Section 1983"); Title VI of the Civil Rights Act of

1964, as amended, 42 U.S,.C. §§ 20004 *et seq. ("Title VI");* Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 161 *et seq.* ("Title IX"), and the statutory and common law of the Sate of Georgia. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§1331 and 1367(a).

SUMMARY OF ARGUMENT

This case presents three distinct issues: (1) whether *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) constitutes substantive law that identifies which facts are material in a hostile work environment claim such that a district court is required to determine which alleged acts or conduct are part of the hostile environment claim for the purposes of determining a summary judgment motion; (2) whether *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) constitutes substantive law that requires a district court in the first instance to determine whether a plaintiff's interest in a grievance hearing constitutes an interest encompassed by the Fourteenth Amendment's protection of property on a procedural due process claim for the purpose of determining a summary judgment motion; and (3) whether a federal circuit court of appeals can declare a frivolous appeal under FRCP 38 where the district court applied incorrect law in its determination of summary judgment and where district court denied FRCP Rule 11 sanctions on same issue.

ARGUMENT

In *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988), this Court stated with clarity and with force the duty of the district court with respect to federal law:

> If Congress intended to reach the issue before the District Court, and if it enacted its intention into law in a manner that abides with the Constitution, that is the end of the matter; "[f]ederal courts are bound to apply rules enacted by Congress with respect to matters ... over which it has legislative power." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406, 87 S.Ct. 1801, 1807, 18 L.Ed.2d 1270 (1967); cf. *Hanna v. Plumer, supra,* 380 U.S., at 471, 85 S.Ct., at 1144 ("When a situation is covered by one of the Federal Rules ... the court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions").

HOSTILE ENVIRONMENT CLAIM

In *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the Court clearly outlines standards to identify and distinguish a hostile work environment claim from a discrete act retaliatory or discriminatory claim. When a district court is faced with a summary judgment motion involving factual allegations of conduct spanning over a period of two years, it must necessarily engage in a detailed analysis to determine whether the alleged acts or conduct are discrete acts or hostile environment acts before it can apply the principles of Rule 56 of the Federal Rules of Civil Procedure. In the Tremble case, the district court's analysis was fatally flawed from the beginning. In its governing standard for the hostile work environment claim, the district court never cited Morgan as a source of substantive law or

legal authority for any proposition relating to the claim. Tremble's summary judgment response provided excerpts to 105 exhibits in support of her opposition to appellees-defendants' material statement of facts consisting deposition testimony, Bulloch County Board of Education policies, and other documentary evidence including witness interviews. Tremble's amended complaint and affidavit detailed acts and conduct happening consistently from school year 1998/1999 to 2000/2001. The district court made no attempt to define which alleged acts or conduct were discrete acts or which were hostile work environment acts. It made no attempt to determine the repeated nature or intensity of any of the alleged acts or conduct. It made no attempt to determine the cumulative effect of the alleged acts or conduct. It made no attempt to evaluate the alleged acts or conduct within the context of the teaching environment on the issue of what would be considered discriminatory intimidation, ridicule, and insult to a reasonable black teacher. In short, the district court made no attempt to do objective analysis. Without this analysis, it is impossible for the reviewing court to accurately assess summary judgment de novo when it cannot be determined what facts the district court relied on or what law was applied. In the district court's discussion of Tremble's claims, it simply made a conclusory ruling that, "Plaintiff's racially hostile environment claim likewise fails on the merits in that she fails to demonstrate the level of permeation required by the case law set forth above." Pet. App. at 25. Did the district court by implication determine the EEOC charge filing period, which acts or conduct occurred before July 13, 2001 (the date Tremble filed her EEOC charge, Pet. App. 102), which acts or conduct occurred within the file charging period, or which acts or conduct occurred after the file charging period? If it can be said that a district court can make these important determinations by implication, the district court would be placed above Congress and the U. S.

Supreme Court and answer only to itself. Indeed, this district court cited itself for its authority on the procedural due process issue. Pet. App. at 25, citing *Merritt v. Brantley*, 936 F.Supp. 988, 991 (S.D.Ga. 1996). Whether there is a genuine issue of material fact the district court must refer to the applicable substantive law that identifies which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, the district court's ruling is vague, evasive and incapable of providing a just determination of summary judgment on Tremble's hostile work environment claim within the contemplation of Title VII, Morgan, Rule 1 of the Federal Rules of Civil Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

PROCEDURAL DUE PROCESS CLAIM

In the *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), this Court holds that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount." *Id.* at 569-570. Property rights are created and their dimensions are defined by existing rules or understandings that stem from state law. *Id.* at 577. Georgia law provides:

> (a) It is the intent of this part to resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings so that good morale may be maintained, effective job performance may be enhanced, and the citizens of the community may be better served. These procedures require local units of administration to implement a simple,

> expeditious, and fair process for resolving problems at the lowest administrative level.
>
> (b) It shall be the duty of all local units of administration to adopt a complaints policy for certified personnel that shall contain the definitions and standards provided in this part.
> (Code 1981, § 20-2-989.5, enacted by Ga. L. 1992, p. 3303, 5 1.)

In the Tremble's case, the district court fails to state a governing standard altogether on the procedural due process issue, Pet. App. at 9-19, and in its discussion, the district court cited itself as the source of authority. It never discussed whether Tremble already acquired a property interest in the grievance procedure that requires Fourteenth Amendment's protection. *Id.* at 576. It never discussed the dimensions of the grievance procedure as intended by state law and whether the Board of Education's policy comport with due process in Section 1, the informal procedure, Pet. App. at 31, where no time frame is provided to give notice to employee of the beginning and ending of the informal process. The district court never discussed this law in context of due process issue. Tremble took her initial, and continuing, questions, concerns, or complaints about white principal Riley to Natson, the BCSD's designated official to address such Title VII issues, Pet. App. 90. The district court never discussed this fact or fact he reneged on his obligation to take immediate action to resolve the conflicts at their lowest possible level in the first instance; instead, he essentially set Tremble up as a target for Riley, who consistently found ways to undermine and humiliate Tremble in ways that a teacher would be sure to understand the principal is on a mission to get rid of the teacher. Batten obviously knew about Tremble's grievance long before

receiving it. Riley wrote in her notes "Batten and Natson both said I was overreacting and it looked like with time, the situation would be resolved without us ever having to do anything." Pet. App. at 72. Contrary to the district court's ruling, Pet. App. at 25, Batten thwarted both Tremble's administrative and State-court remedies on the pretext of an incorrect grievance form. Pet. App. at 74-89. On its face the district court failed in its duty under Rules 1 and 56.

FRAP 38 SANCTIONS

Rule 38 of the Federal Rules of Appellate Procedure provides, "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." In the Tremble case, the court of appeals panel fails to state any reasoning for their decision to grant sanctions, other than it agreed with the district court's judgment in all respects. Pet. App. 2-3. The district court itself specifically denied Rule 11 sanctions. In *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 407 (1990), this Court approved the standard that "[W]here an appeal challenges actions or findings of the district court to which an appellate court gives deference by judging under an abuse of discretion or clearly erroneous standard, the court is more likely to find that the appellant's arguments are frivolous". Tremble's appeal is clearly a de novo appeal and abuse of discretion standard is inapplicable. Here, the Eleventh Circuit itself violates Rules 1 and 56, denying Tremble a just determination of her claims at the appellate level and condoning the district court's application of incorrect law or application of no law at all.

CONCLUSION

I. Because the Eleventh Circuit Court of Appeals has

entered a decision that conflicts with *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) on the governing standards for the district court to follow in consideration of summary judgment motion for a hostile work environment claim, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

II. Because the Eleventh Circuit Court of Appeals has entered a decision that conflicts with *Board of Regents v. Roth,* 408 U.S. 564 (1972) on the governing standards for a district court to follow in consideration of summary judgment on Fourteenth Amendment due process claim, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

III. Because the court of appeals failed to state reasoning for granting FRAP 38 sanctions when district court itself denied Rule 11 sanctions, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

Tremble requests this Court to issue a writ of certiorari with remand on all claims with instructions for the Eleventh Circuit Court of Appeals to follow applicable U.S. Supreme precedent by way of having the U. S. District Court for the

Southern District of Georgia to apply U. S. Supreme Court precedents as set forth above.

Respectfully Submitted,

s/Sandra Jackson Sheppard
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Supreme Court, U.S.
FILED
(2)

05-104 MAY 05 2005

OFFICE OF THE CLERK

No. _____

In the _____

SUPREME COURT OF THE UNITED STATES

BRENDA E. TREMBLE,
Petitioner

v.

BULLOCH COUNTY SCHOOL DISTRICT
LYNN BATTEN
EUGENE NATSON, JR.
SHIRLEY COBB
BRENDA SHUMAN RILEY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

APPENDIX

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In the

Supreme Court of the United States

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APPENDIX

APPENDIX

I. OPINIONS OR ORDERS

No. 04-10705
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

D.C. Docket No. 01-00134CV-6

BRENDA E. TREMBLE,
Plaintiff-Appellant,

v.

BULLOCH COUNTY, Bulloch County School District, LYNN BATTEN, et al.,
Defendants-Appellees.

Appeal from the United States District Court For the Southern District of Georgia

(November 24, 2004)

Before ANDERSON, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

After oral argument and careful consideration, we conclude that the judgment of the district court is due to be affirmed in all respects.

AFFIRMED.

FN 1 Appellees' Motion for Sanctions pursuant to Fed.R.App.P. 38 is GRANTED in part. We conclude that sanctions are due to be granted against appellant for having filed a frivolous appeal, but only with respect to the appeal of the procedural due process issue. Appellees are directed to assiduously separate out their time expended on this appeal which relates to the procedural due process issue. Appellees shall also designate the billing rate for the attorney or attorneys whose time is involved. Appellees shall include the foregoing in affidavit form and shall file same with the Clerk of this Court within 7 days after the date of this opinion. Appellant may file a response thereto within 7 thereafter. Single costs are also awarded against appellant.

[End of Opinion]

FILED U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEBRUARY 4, 2005

No. 04-10705-II
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
D.C. Docket No. 01-00134CV-6

BRENDA E. TREMBLE,
Plaintiff-Appellant,

v.

BULLOCH COUNTY, Bulloch County
School District, LYNN BATTEN, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of Georgia

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
Before: ANDERSON, DUBINA and BLACK, Circuit Judges.
PER CURIAM:
The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5, the Petition(s) for Rehearing En Banc are DENIED.
ENTERED FOR THE COURT:

S/S. Black

UNITED STATES CIRCUIT JUDGE
FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
JANUARY 7, 2004

DISTRICT COURT SUMMARY JUDGMENT OPINION (R7-127)
[** indicates District Court's page number]

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff, 601 CV 134

v.

BULLOCH COUNTY SCHOOL DISTRICT, et al.,
Defendants.

In this employment-discrimination case a black elementary school teacher raises claims under Title VII (42 U.S.C. § 2000e, *et seq.),* 42 U.S.C. §§ 1981 & 1983, Title VI (42 U.S.C. § 2000d, *et seq.),* Title IX (20 U.S.C. § 1681, *et. seq.)* and Georgia law against the Bulloch County School District and various individuals (like the District's Superintendent, Lynn Batten, and other supervisorial staff). Plaintiff alleges, *inter alia,* that defendants unlawfully discriminated against her because of her race (e.g., she was assigned her to a "racially unbalanced" classroom, unfairly and discriminatorily reprimanded/criticized), created a racially

hostile environment, etc. Doc. # 10 ¶¶ 12- 36, 41-61; # 119 at 4-6, 10.

Tremble thus pursues compensatory and punitive damages, plus injunctive relief. Doc. # 119 at 8-9. Defendants move for summary judgment' (doc. # 71), to dismiss, doc. # 75, and for F.R.Civ.P. 11 sanctions. Doc. # 80. Tremble moves for additional time to respond to

> **FN 1** This Court applies the summary judgment principles explained in *Mize v. Jefferson City Bd of Educ.*, 93 F.3d 739, 742-43 (11th Cir. 1996); *Cohen v. United American Bank of Cent. Fla.*, 83 F.3d 1347, 1349 (11th Cir. 1996) and *Nizami v. Pfizer, Inc.*, 107 F.Supp.2d 791, 799 (E.D.Mich. 2000). Unrebutted, evidentially supported Fact Statements are deemed admitted under S.D.GA.LOc. R. 56.1 and *Dunlap v. Transamerica Occidental Life Ins. Co.*, 858 F.2d 629, *632* (11th Cir. 1988).

defendants' summary judgment motion, doc. # 95, and appeals from Magistrate Judge (MJ) rulings. Doc. ## 78-79. Defendants, meanwhile, move to strike her S.D.GA.Loc.R. 56.1 factual response statement. Doc. # 112.

II. BACKGROUND

In one of her briefs, plaintiff described her claims:

> This is a Title VII hostile or abusive work environment action based on race. Plaintiff ... was an elementary school teacher in the

Bulloch County School System ("BCSD") at Sallie Zetterower ["Sallie Z" elementary school] from 1994 until her disability retirement on [11/15/01]. Plaintiff began voicing her concerns to the Assistant Superintendent, Defendant [Eugene Natson, Jr.], about the principal, [Defendant Brenda Shuman-Riley], around May of 1999. Although ... Natson at that time told Plaintiff he would arrange mediation between [Tremble] and Riley, to take place in his presence, Natson changed his mind and simply referred Plaintiff's concerns back to Riley. The net result of Defendant Natson's actions was the continuation and acceleration of the conflict between Defendant Riley and Plaintiff. Plaintiff continue[d] to complain to Defendant Natson about what she perceived as retaliation from Defendant Riley for Plaintiff having gone to Natson about Riley around May of 1999. And Defendant Natson admitted during his deposition that on each occasion of Plaintiff coming to him, he referred the matter back to Defendant Riley. Defendant Natson further admitted that on none of the occasions of referring **2** Plaintiff's complaints back to Defendant Riley did he ever provide to Riley any guidelines on how to handle the conflict with Plaintiff, although Natson knew Riley was a new principal in BCSD. Plaintiff alleges a series of incidents that occurred from 1998 through 2001 in which Defendant Riley found ways to intentionally undermine Plaintiffs confidence as a teacher, to make Plaintiff appear incompetent

> to her coworkers, to make it obvious to her coworkers that Plaintiff was no longer in good stead with the Defendant Riley, and to generally, make possible an atmosphere where certain coworkers could find ways to knowingly, or unknowingly, assist Defendant Riley in her clear intent to humiliate, degrade, and "put Plaintiff in her place," that is, to visit upon Plaintiff the badges of slavery, an attitude projected to Plaintiff by the conduct of her white Principal, Defendant Riley, her white Assistant Principal, Defendant Shirley Cobb, her black Assistant Superintendent, Defendant Natson, and her white Superintendent, Defendant Batten, and reinforced by certain of her white coworkers. Plaintiff's lawsuit arises out of the intentional failure of the Defendants to take reasonable steps to resolve Plaintiff s initial concerns that mushroomed into complaints and, ultimately, this lawsuit.

Doc. # 60 at 2-3[2]; *see also* doc. # 119 at 4-6.

As will be demonstrated by the "Governing Standards" set forth *infra,* plaintiff must now

> **FN 2** Note that plaintiff violated S.D.GA.Loc.R. 7.1(b) *("Every* factual assertion in a motion, response, or *brief* shall be supported by a citation to the pertinent page in the existing record or in any affidavit, discovery material, or other evidence filed with the motion") (emphasis added).

adduce competent evidence showing that *racially discriminatory animus,* as opposed to simple personality

conflicts and/or professional disagreements, deficient management style (etc.), supports her discrimination claims. In that regard, plaintiff has clarified that she raises no Title VI, VII or IX claims against any of the individual defendants in their individual capacities. Doc. # 86 at 3-4; *see Shotz v. City of Plantation, Fla.,* 344 F.3d 1161, 1170 n. 12 (11th Cir. 2003) (no individual liability on Title VI and Title IX claims).

III. ANALYSIS

A. Governing Standards

1. Title VII Disparate Treatment

Because Tremble offers no direct evidence of discrimination, she by definition relies on circumstantial evidence (i.e., because there are footprints in the snow, it's reasonable to conclude that someone walked in it) to prove her Title VII claim, which is thus analyzed using the burden-shifting framework found in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973). She therefore bears the initial burden of establishing a prima facie case. *See Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248, 253 (1981). That means she must show that, because of her race, she suffered an "adverse employment action." *Taylor v. Small,* 350 F.3d 1286, 1292 (D.C.Cir. 2003).[3]

> **FN 3** Typically, to establish a Title VII prima facie case, the plaintiff must show that: (1) she belongs to a class protected under Title VII; (2) she was qualified for the position she held; (3) she suffered an adverse employment action; and *(4)* she was replaced by an individual not within the protected class." *Brewer v. Cleveland Municipal School District,* 2003'W L 23095541 at * 1 (6th Cir.

> 12/11/03) (unpublished)(citing *McDonnell Douglas,* 411 U.S. at 802); *see also Taylor,* 350 F.3d at 1292 (elements in a Title VII retaliation case).
>
> Here the defendants explicitly concede that plaintiff has met elements (I) and (2), focus their main defense on element *(3) (i.e.,* no adverse employment action), doc. # 72 at 1-3, and argue that element (4) is moot because plaintiff voluntarily retired. *Id* at 13-14.

3 But it's far too easy to point to dissimilar races between workers and bosses, then claim that race discrimination drove an unpleasant event or exchange. Judges and juries can't look into people's minds after the fact and ascertain whether that occurred, and not "every unkind act" is sufficiently adverse. *Davis v. Town of Lake Park, Fla.,* 245 F.3d 1232, 1238 (11th Cir. 2001).

To police the borderline between actionable and non-actionable Title VII (etc.) claims, then, courts have imposed minimum circumstantial-evidence benchmarks that plaintiffs must meet in order to take their case to a jury (i.e., survive summary judgment). An "adverse employment action" thus is defined as

> a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits. [Hence,] formal criticism or poor performance evaluations are not necessarily adverse actions and they should not be considered such if they did not

affect the employee's grade or salary.

Taylor, 350 F.3d at 1292 (quotes, cites and alterations omitted); *see also id.* (employee failed to make out prima facie Title VII retaliation claim, absent showing that supervisor's allegedly retaliatory acts -- changing employee's first-line supervisor and modifying her performance plan -- constituted adverse employment actions; there was no evidence that changes had material adverse effect upon terms or conditions of employee's employment); *Sinegar v. Jefferson Parish Sch. Bd.,* 2003 WL 21977157 at * 5 (E.D.La. 8/13/03) (unpublished) ("alleged write ups, conferences, and warnings did not constitute adverse employment actions"); *Murphy v. Bd. of Educ.,* 273 F.Supp.2d 292, 303-04 (W.D.N.Y.2003) (Transfers and reassignments of teacher to different schools did not constitute adverse employment actions, as required to support teacher's discrimination and retaliation claims under federal statutes against school district: transfers and reassignments did not materially change any of teacher's conditions of employment, nor did they result in change in responsibilities so significant as to constitute setback in teacher's career) .[4]

FN 4 The Court notes that Tremble is blending equal protection -- brought under § 1983 -- and Title VII claims here. Doc. # 119 at 8 ¶ 10. "[T]he same standards for proving intentional discrimination apply to Title VII and § 1983 equal protection" claims. *Williams v. Send* 342 F.3d 774, 788 n. 13 (7th Cir. 2003); *Brewer,* 2003 WL 23095541 at * I ("To prove a violation of the equal protection clause under § 1983, a plaintiff must prove the same elements as are required to establish a disparate treatment

> claim under Title VII, i.e., under the *McDonnell Douglas/Burdine* framework") (quotes, cites and brackets omitted). Hence, on her equal protection violation plaintiff must demonstrate that she: (1) is a member of a protected class; (2) is similarly situated to members of the unprotected class; (3) suffered an adverse employment action; and (4) was treated differently from members of the unprotected class. *Williams,* 342 F.3d at 787.
>
> Because the individual defendants have raised the qualified immunity defense, doc. # 11 at 4 ("Sixteenth Defense"), the Court ordinarily must first analyze (on the § 1983 claim) whether there was a constitutional violation, then determine whether, at the time defendants took the alleged actions, it was clearly established that such actions violated the Constitution. *Hilderbrandt v. Illinois Dep't of Natural Resources ana' Kiehardlittle,* 347 F.3d 1014, 1028 (7th Cir. 2003). In light of the result reached below, however, it is not necessary to do this.

It follows that generalized and **4** unsubstantiated (i.e., speculative, or "personal belief') claims of adverse employment action will not suffice. *Jones v. Barnhart,* 349 F.3d 1260, 1269-70 (10th Cir. 2003) (Employee's generalized and unsubstantiated claims that Social Security Administration assigned her less desirable cases following her EEOC complaint, in that her cases were thicker and reflected personal issues in her life, were insufficient to establish adverse employment action, as required for prima facie claim of retaliation under Title VII); *Howard v. Bd. of Ed. of Memphis City Schs.,* 70 Fed.Appx. 272, 280 (6th

Cir. 2003) (Racially insensitive comments made to black teacher, and reassignment from her classroom in main school building to portable classroom, did not individually or collectively rise to the level of an adverse employment action for purposes of Title VII).

Also, plaintiff must show that other, similarly situated *white* teachers received better treatment. *See Black v. Columbus Public Schs, 79* Fed.Appx. 735, 738 (6th Cir. 2003) (Assistant principal's knowledge of school principal's alleged affair with parent of student, which allegedly led to her transfer to different, less prestigious school, did not constitute actionable disparate treatment based on sex under Title VII; assistant principal failed to show that any similarly situated non-protected employee was treated more favorably); *Howard,* 70 Fed.Appx. at 280-81 (Reassignment of black teacher from her classroom in main school building to portable classroom did not violate Title VII where teacher did not show that she was treated differently from similarly situated non-minority employees)[5]

FN 5 This requirement is imposed in Title IX cases, too. *See Mallory v. Ohio Univ.,* 76 Fed.Appx. 634, 640 (6th Cir. 2003) (Former university student, who was expelled for his alleged sexual assault on intoxicated female student, failed to prove his claim that he was the victim of selective enforcement of university's prohibition against sexual assault in violation of Title IX prohibition against sexual discrimination, absent any evidence of a female in circumstances-sufficiently similar to his own who was treated more favorably by university), *cert. denied,* _S.Ct. 2003

WL 22207189 (12/1/03).

If plaintiff establishes a prima facie case, the burden shifts to BCSD to articulate a legitimate, nondiscriminatory reason for the employment action. *McDonnell Douglas,* 411 U.S. at 802. If BCSD produces a legitimate reason for the action, the burden shifts back to the plaintiff to show that her employer's rationale is just a pretext for discrimination. *Id.* at 804.[6] Tremble has the ultimate burden of demonstrating that BCSD's action was discriminatory. *St. Mary's Honor* Cu. *v. Hicks,* 509 U.S. 502, 515 (1993).

> **FN 6** "Plaintiffs typically show pretext by revealing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence." *Jones, 349* F.3d at 1265 (quotes and cite omitted); *see also Murphy,* 273 F.Supp.2d at 306 (School district's proffered reasons for transferring ~~white teache~~her, who was over 40 years old, to different school, Le., because of declining enrollment at teacher's prior school and budgetary constraints, were not pretexts for reverse race discrimination, age discrimination, or retaliation; regardless of whether school's enrollment actually declined, decisionmaker believed that it was going to decline at time he transferred teacher, and a white, older teacher was not transferred).

2. Racially Hostile Environment

As for her racially hostile work environment claim (not explicitly raised as a Count in her Amended Complaint, doc. # 10, but raised without objection in the Pretrial Order, doc. # 119 at 6, 10), Tremble

> is required to demonstrate that a rational jury could conclude that [her] workplace [was] permeated with discriminatory **5** intimidation, ridicule, and insult that [was] sufficiently severe or pervasive to alter the conditions of [her] employment and create[d] an abusive working environment. This requires [her] to assert more than a few isolated incidents of racial enmity. Courts attempting to make the determination of whether the environment is hostile must examine all of the circumstances alleged including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

Jones, 349 F.3d at 1268 (quotes and cites omitted); *O'Shea v. Yellow Tech. Servs. Inc.,* 185 F.3d 1093, 1097 (10th Cir.1999); *Sullivan v. Newburgh Enlarged Sch. Dist.,* 281 F.Supp.2d 689, 703-04 (S.D.N.Y. 2003) (Employee can avoid summary judgment on hostile work environment claim by demonstrating either that single incident of discrimination was extraordinarily severe or that series of incidents were sufficiently continuous and concerted to have altered conditions of her working environment; employee's evidence must also show that conduct at issue creates environment that is both objectively and subjectively hostile, though environment need not be

unendurable or intolerable).

Hence, perceived and even actual slights (as opposed to grievously offensive conduct) don't make the grade here. *See Jones,* 349 F.3d at 1269 (Alleged incidents at Social Security Administration, including assigning black employee cases involving mental health issues when her daughter had mental illness, supervisor offering employee cupcake depicting black doll, coemployee giving employee goodbye card portraying office with only white workers, and ALJ using words "black and white" to describe clarity of written notice, if proven, did not create racially hostile environment in violation of Title VII).

The burden on this claim is somewhat demanding because it is too easy to mischaracterize as racism a supervisor's stem criticisms or abrasively imperious manner. *See Howard,* 70 Fed.Appx. at 281 (white principal's chastising of black teachers for not attending a luncheon sponsored by parent-teacher organization and comments made in relation to a Malcolm X assignment did not demonstrate that black teacher's work environment was permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of her employment; furthermore, such conduct did not constitute a tangible employment action for Title VII purposes).

In addition, the hostile conduct must be aimed at the plaintiff *and* occur on account of her race, rather than merely form part of a generalized atmosphere of unpleasantness. *See Sullivan,* 281 F.Supp.2d at 704 (Even if employee can establish that she was exposed to objectively and subjectively hostile work environment, she will not have claim under Title VII unless she can also demonstrate that hostile work

environment was caused by animus *towards her* as result of her membership in protected class); *Murphy,* 273 F.Supp.2d at 312-13 (White male teacher failed to establish racially or sexually hostile work environment claims under Title VII; although teacher's working conditions might not have been pleasant, and he was allegedly subjected to danger of student violence, such unpleasantness and danger was not shown to be due to teacher's sex or race).

****6** 3. Title VII Retaliation Claim**

"In order to state a prima facie retaliation claim *[see* doe. # 10, Count III], a plaintiff must prove: (1) the employee engaged in protected activity; (2) the employer took adverse employment action against the employee; and (3) a causal connection between the protected activity and the adverse action." *Kaszynski v. Thompson,* 2003 WL 22989697 at * 2 (4th Cir. 12/19/03) (unpublished); *Jones,* 349 F.3d at 1269.

> As with the hostile work environment claim, a burden-shifting scheme is utilized [in retaliation cases]. If a prima facie case is made, the employer may rebut it by showing a legitimate, nondiscriminatory reason for the adverse action. If this burden is met, the plaintiff must then show by a preponderance of the evidence that the proffered reason is only a pretext for retaliation.

Kaszynski, 2003 WL 22989697 at * 2 (cites omitted); *see also Howard,* 70 Fed.Appx. at 283 (black teacher presented sufficient evidence to establish a prima facie case of retaliation under Title VII; after teacher filed her first internal complaint regarding white principal, she was transferred from her classroom, subjected to continued

scrutiny and monitoring by principal, sabotaged in her efforts to obtain an administrative position, transferred to several different schools, and given a service pin commemorating her service as a custodial helper).

3. Section 1981 Retaliation Claim

Section 1981 provides a cause of action for race-based employment discrimination based on a hostile work environment. *Sullivan,* 281 F.Supp.2d at 707. "[Section] 1981 liability will lie against an individual defendant if that individual is essentially the same as the State for the purposes of the complained-of conduct." *Foley v. University of Houston System,* _ F.3d _ , 2003 WL 22965483 at * 3 (5th Cir. 12/18/03) (quotes and cite omitted); *see also id.* at *4 (Employee's claim that he or she was subjected to retaliation because he or she complained of race discrimination is cognizable claim under § 1981); *id.* at * 5 (Although § 1981 and Title VII are parallel causes of action, with same elements establishing liability under both statutes, relief under Title VII is available only against employer, while under § 1981 it is also available against individual supervisor or fellow employee).

But employment discrimination claims brought pursuant to § 1981 and § 1983, including those alleging a racially hostile work environment, are evaluated under same analytical framework as claims brought under Title VII. *Jessamy v. City of New Rochelle,*____F.Supp.2d ____ , 2003 WL 22770101 at * 8 (S.D.N.Y. 11/19/03); *Sullivan,* 281 F.Supp.2d at 708 (Hostile work environment claims under § 1981 and § 1983 are analyzed under Title VII framework).

Yet, "[c]laims against individual public officials under §

1981 are subject to the defense of qualified immunity, as are claims against such individuals under § 1983." *Foley,* 2003 WL 22965483 at * 3 (cites omitted). Supervisorial faculty, then, are entitled to qualified immunity from civil rights liability when their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. *Id.; see also supra* note 4.

But "[n]ot every change in the employment status quo gives rise to liability for retaliation. Only ultimate employment decisions satisfy the adverse employment action element of a Title **7** VII claim.... An employment action that does not affect job duties, compensation, or benefits is not an adverse employment action under Title VII." *Sinegar,* 2003 WL 21977157 at * 5 (quotes, cites and alterations omitted).

5. Constructive Discharge

Finally, "[c]onstructive discharge occurs when the employer by its illegal discriminatory acts has made working conditions so difficult that a reasonable person in the employee's position would feel compelled to resign." *Jones,* 349 F.3d at 1270 (quotes and cite omitted). A plaintiff, however, cannot advance merely subjective views in support of her constructive-discharge allegations. She "must demonstrate that objectively, she had no other choice but to quit." *Id.* (quotes and cite omitted); *Robinson v. Sappington,* 351 F.3d 317, 336 (7th Cir. 2003).

B. Tremble's Claims

1. Adverse Employment Action

Tremble's case bears many parallels to the facts in *Cottman v. Aurora Pub. Schs.*, 2003 WL 22969351 at * 1 (10th Cir. 12/18/03) (unpublished) ("Plaintiff, an African American, began her teaching career as an elementary school teacher with the Aurora Public Schools (APS). In 1994 she was selected for a position as an assistant principal at Vaughn Elementary School and worked in that capacity through the 1994-1995 school year. By the fall of 1995 serious conflicts had arisen between plaintiff and her principal, Lisa Spreitzer, a white female. In January of 1996, largely because of the staffs concern with the leadership at Vaughn, Spreitzer was demoted from her position as principal and plaintiff was laterally transferred to Crawford Elementary School"). Things never did work out for Cottman, who, similar to Tremble, "went on medical leave ... citing job stress." *Id.* All of her claims, many substantially the same as those raised here, were found meritless. *Id.* at * 5.

Here defendants comprehensively detail plaintiffs claims and challenge her to show that she suffered an adverse employment action as defined above. Doc. # 72 at 1-13. In response, Tremble has resorted to confusing bulk instead of precise concision. *See* doe. # 112 at 2 (defendant's motion to strike her Rule 56.1 response statement, or "Disputation," as untimely, nearly 50 pages in length, doc. # 111, and accompanied by a 55-page affidavit plus 104 exhibits, doc. # 98).[7]

FN 7 Those who violate S.D.GA.Loc.R 10.1's pagination command needlessly burden this Court. *See* doc. # 112 (defendants's strike motionbrief). The Court has manually paginated doc. # 112 so that it can pin cite to pages within it. Counsel are

> instructed to train themselves and their staff to use their word processor's pagination feature.

The Court also agrees with defendants that plaintiff has failed to comply with basic time deadlines[8] and minimum briefing requirements. On the latter point, the Court notes that Tremble devotes the lion's share of her brief describing her factual disputes and personal beliefs and inferences as to individual defendants' "real" (i.e., race-based) motivations, doc. # 97 at 1-23, but then simply refers the Court back to that discourse in purporting to respond to defendants' legal arguments -- as if the Court is somehow obligated to link each of her summary legal arguments up with specific factual assertion clusters -- themselves derived mainly from her 2.5" thick affidavit (doc. # 98). "A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with

> FN 8 Tremble's counsel concedes untimeliness but cites to office-management problems -- embezzlement by her employee and the time/emotional strain that has caused -- -as excusable neglect. Doc. # 115. Given the result reached below, it is not necessary to resolve this issue.

** 8** the record." *DeSilva v. DiLeonardi,* 181 F.3d 865, 867 (7th Cir. 1999).

Suffice it to say that plaintiff fails to show an "adverse employment action" as defined above. She does not rebut, for example, defendants' showing that "[d]efendant Riley appointed her Chair of Sallie Z's Reading First Program and First Grade Representative for the 1998-99 school year," doc. # 73 at 3 ¶ 8, but those positions carried no

additional pay or benefits, *id* ¶ 9, so she therefore suffered no salary or benefits loss when Riley later removed her from same. The same may be said for defendants' other showings on that score. True, Title VII does not require

> any direct economic consequences, [but] the employer's action must impact the terms, conditions, or privileges of the plaintiffs job in a real and demonstrable way, and the asserted impact cannot be speculative and must at least have a tangible adverse effect on the plaintiffs employment. [Again, t]he employee's subjective view of the significance and adversity of the employer's action is not controlling; the employment action must be materially adverse as viewed by a reasonable person in the circumstances. The limitation is consistent with the basic principle that Title VII is neither a general civility code nor a statute making actionable the ordinary tribulations of the workplace.

Brown v. Sybase, Inc., 287 F.Supp.2d 1330, 1339 (S.D.Fla. 2003) (quotes, cite and alterations omitted) (applying *Davis*, 245 F.3d at 1238-39). But Tremble cannot rely upon her subjective view of significance and adversity of her employer's action; it must be materially adverse as viewed by reasonable person under the circumstances. *Id.* There must be "some threshold level of substantiality that must be met for unlawful discrimination to be cognizable." *Wideman v. Wal-Mart Stores, Inc.*, 141 F.3d 1453, 1456 (11th Cir.1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998) ("a tangible employment action constitutes a *significant* change in employment status such as hiring, firing, failure to promote, reassignment with significantly

different responsibilities, or a decision causing a significant change in benefits") (emphasis added).

Tremble forgets that she, like every other employee, must absorb quite a few managerial thumps before making "a federal case" out of any claimed adverse personnel actions. *See Brown.* 287 F.Supp.2d at 1342 (black employee's placement on 30-day performance improvement plan (PIP) did not constitute adverse employment action, so as to support prima facie case of race discrimination under Title VII or retaliation under the Florida Civil Rights Act; although employee's placement on PIP increased his responsibilities and altered his job requirements, such placement was intended to assist employee and it was unaccompanied by any tangible harm, such as decrease in salary or change in job title or classification); *Smith v. Alabama,* 252 F.Supp.2d 1317, 1332-33 (M.D.Ala. 2003) (State commissioner's denial of black employee's request to draft letter seeking salary increase did not make serious and material change in terms, conditions, or privileges of employee's position, and thus employee did not suffer "adverse employment action," as required to maintain Title VII retaliation claim; although employee was allegedly inconvenienced by such denial, and commissioner allegedly criticized employee for request, he subsequently received retroactive pay raise); *Bell v. Eufaula City Bd. of Educ.,* 995 F.Supp. 1377, 1385 (M.D.Ala.1998) (new teaching assignment was not an adverse employment action even though it required more work; transfer to new class **9** assignment cannot be considered an adverse employment action because it is an "inherent aspect of the teaching profession").

Here what little evidence Tremble points to never rises to the "adverse" level. She spends much of her factual

"disputation," for example, subjectively characterizing the "real" intentions behind her "Reading Chair" removal, but never gets around to even contending that it was tantamount to *a significant* demotion or some other sufficiently substantial adverse result (she thus tacitly concedes she lost no pay or benefits, by the way). *See* doc. # 97 at 1-5.

The same may be said for defendants' remaining "no adverse result" showings. *See* doc. # 75 at 3-7. Defendants therefore are entitled to summary judgment against plaintiff s Title VI, VII, § 1981 and § 1983 claims on these grounds alone.

2. Disparate Treatment, Pretext

Tremble also has failed to show dissimilar (better) treatment of a comparator. *See, e.g., Gustin v. West Virginia Univ.*, 63 Fed.Appx. 695, 699 (4th Cir. 2003). She points to no evidence of a white teacher sufficiently similar to her situation who received better treatment.

Nor has plaintiff pierced defendants' proffered reasons for the complained of employment actions, *see* doe. # 73 ¶¶ 8-10, 21-33, thus showing them to be merely a pretext for discrimination. Defendants therefore are also entitled to summary judgment on these additional grounds.

3. Title VII, § 1981 Retaliation Claim

Defendants are also entitled to summary judgment on plaintiff's retaliation claim. They have stated, as a matter of fact, that Tremble "did not engage in any statutorily protected activity." Doc. # 73 ¶ 37. Plaintiff responds to this merely by citing the Court to a copious, meandering Fact

Statement, doc. # 97 at 1-23, then fails to squarely argue, for example, that "I engaged in ABC statutorily protected activity when I did or said DEF, and defendants retaliated by doing GHI to me."

Instead, she invites the Court to sift through her "Statement" and mate her facts with the law to salvage this claim. Suffice it to say that the defendants have now established that Tremble "did not engage in any statutorily protected activity." Doc. # 73 ¶ 37. That, in turn, neutralizes her retaliation claim.

4. Racially Hostile Environment

Plaintiffs racially hostile environment claim likewise fails on the merits in that she fails to demonstrate the level of permeation required by the case law set forth above.

5. Constructive Discharge

Plaintiff similarly fails to link up the above-stated constructive discharge elements with the facts in her case. It is not enough to launch a long-winded "gripe-fest" about every little thing that irritated her; rather, by pointing to specific evidence, she "must demonstrate that *objectively,* she had no other choice but to quit." *Jones,* 349 F.3d at 1270 (emphasis added). This she has failed to do.

6. Procedural Due Process

To the extent plaintiff raises a procedural due process claim under § 1983, it is denied because she has failed to show that State actors thwarted both her administrative and *State-court* remedies. *See Merritt v. Brantley,* 936 F.Supp. 988, 991 (S.D.Ga. 1996) ("In other words, even ****10****

assuming *arguendo* that Merritt held a protectible property interest in his coaching job, a fatal flaw nevertheless exists in Merritt's case. That flaw is not grounded upon any failure to exhaust an available state remedy, but rather upon Merritt's failure to show the absence of an adequate state remedy. That is the essence of a procedural due process claim in this context").

7. Title IX Claim

Plaintiff also advances a Title IX claim (limiting it to BCSD). Doc. # 10 at 18. Title IX provides that

> [n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a) (1984).

"[F]unding recipients [like BCSD] are properly held liable in damages only where they are deliberately indifferent to *sexual* harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." *Hawkins v. Sarasota County Sch. Bd.*, 322 F.3d 1279, 1284-85 (11th Cir. 2003) (emphasis added).

Tremble is traveling on *race* discrimination, hostile racial environment and retaliation claims here. She does not show the Court how she jumps the line on that score. In determining that a high school coach did not haye a private

right of action for retaliation, the Eleventh Circuit concluded that "review of both the text and structure of Title DC yields no congressional intent to create a cause of action for retaliation, particularly for a plaintiff who is *not* a direct yictim of *gender* discrimination." *Jackson v. Birmingham Bd. ofEduc.,* 309 F.3d 1333, 1348 (11th Cir. 2002) (emphasis added).

The Court sees no support for Tremble's race-based, Title IX claims under any of her recovery theories. *See also id.* at 1346; *Mock v. South Dakota Bd. of Regents,* 267 F.Supp.2d 1017, 1018 (D.S.D. 2003) ("Title IX did not provide a private right of action for retaliation"). Even were the claim facially actionable, Tremble fails to show that a comparator received better treatment. *See supra* note 5.

8. Emotional Distress (State Law) Claim

With her federal claims dismissed, the Court declines to exercise supplementary jurisdiction over Tremble's State law claim (emotional distress). *See Merritt,* 936 F.Supp. at 993.

9. Rule 11

The remainder of plaintiffs claims are without merit. Her case cannot be said to have crossed the "Rule 11" line (though it comes close),[9] so defendants' Rule 11 motion is denied.

> FN 9 Rule 11 sanctions are imposed when a party: (1) files a pleading that has no reasonable factual basis; (2) files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be

advanced as a reasonable argument to change existing law; or (3) files a pleading in bad faith for an improper purpose. *Kaplan v. DaimlerChrysler, A.G.,* 331 F.3d 1251, 1255 (11th Cir. 2003) (emphasis added).

Much of what plaintiff has filed here has had no reasonable *factual or legal* basis (on the surface, she's alleged that management mistreatment was impermissibly race-driven; some probing beneath the surface of her allegations has been required to determine that her claims fail to surmount the evidentiary borderlines illuminated in Part III(A) *supra).* Typically, only *facially unsupported* race-driven; some probing beneath the surface of her allegations has been required to determine that her claims fail to surmount the evidentiary borderlines illuminated in Part III(A) *supra).* Typically, only *facially unsupported* claims rate Rule 1 I sanctions, though that's not to say that those who pile on dense underbrush to obscure frivolous claims should escape the rule's wrath. *See Roberts v. United Paper Workers,* 401 CV257, doc. *52* at 15 (S.D.Ga. 11/25/02) (reminding race-discrimination plaintiff that sheer bulk will not insulate against Rule-11 violating filings). Exercising (generously at that) its discretion, the Court determines that Tremble just barely skates away from the Rule 11 hole in her ice.

11 denied. (sic) And, in light of this result, the remaining motions (and Tremble's MJ appeals) are denied as moot.

IV. CONCLUSION

Defendants' motion for summary judgment (doc. # 71) is *GRANTED* and plaintiff Brenda E. Tremble's Complaint is therefore *DISMISSED WITH PREJUDICE,* except that her emotional distress (State law) elaim is *DISMISSED* ***WITHOUT PREJUDICE.*** The Court *DENIES* defendants' motion for F.R.Civ.P. 11 sanctions (doc. # 80) and *DENIES* as moot all other pending motions, as well as plaintiffs appeals from the Magistrate Judge's rulings (doc. ## 78-79).

This 7th day of January, 2004.

s/B. Avant Edenfield, Judge
United States District Court
Southern District of Georgia

II. OTHER ESSENTIAL MATERIAL

CONTRACT OF EMPLOYMENT
(R6-111-[Ex 51] Excerpt D 0176)

The terms and conditions of this contract are made expressly subject to provisions of the Constitution and the laws of the State of Georgia.

Date of Offer: 04/11/2001
Date of Acceptance: 06/28/01

s/Lynn Batten	s/Brenda Tremble
School System Superintendent	Employee

(R6-111-[Ex 51] Excerpt D 0869)

BOARD POLICY
COMPLAINTS AND GRIEVANCES
Descriptive Code: GAE Date: 2/16/98

SECTION 1. PURPOSE: INFORMAL RESOLUTION PREFERRED. It is the purpose of this policy to implement the provisions of the Act of the General Assembly of 1992, O.C.G.A. 20-2-989.5 et seq. In accordance with the foregoing, it is the policy of the Board of Education that certified personnel shall have the right to present and resolve complaints relating to certain matters affecting the employment relationship at the lowest organizational level possible. The Board of Education encourages all employees to resolve their complaints informally in a spirit of collegiality where possible. This policy and procedure is available where such efforts do not succeed, or where, for any other reason, the certificated employee desires to pursue this procedure.

SECTION 2. DEFINITIONS

a. "Level One Administrator" means the principal of a school with respect to teachers and other certificated personnel assigned to that school. With respect to the certified Administrators supervised by the Superintendent, the "Level One Administrator" shall be the Superintendent. In any case not covered by this paragraph, the "Level One Administrator" shall be the supervisory certificated person designated by the Board or in the absence thereof, by the Superintendent.

b."Central office administrator" means the local school system Superintendent.

c."Complaint" means any claim or grievance by a certificated

employee of this school district which is filed pursuant to this policy and which comes within the scope of the policy.

d."Notification" means delivery in person to the party entitled to notification, or deposit in the United States Mail, certified mail, return receipt requested, to the last known address of the party notified.

STATE REF.: Georgia Board of Education Rule GAE (160-1-3-.01); BCAEA (160-1-3-.04)
State Standards B 1; G 8; G 11.1
LEGAL REF.: O.C.G.A., 20-2-210; 20-2-790 et seq.; 20-2-940 et seq.; 20-2-989, as amended, 1992, 20-2-989.5 et seq.; 20-2-1160; *Dalton City Board of Education v. Smith,* 256 Ga. 294 (1986)

CHARGE OF DISCRIMINATION
(Excerpt D 0116)

Cause of Discrimination Based On: Race and Retaliation
Date Discrimination Took Place: Earliest 05/01/1998
Latest 02/06/2001

The Particulars are: I. I was hired in 1994, as a teacher at the Sallie Zetterower Elementary School. From 1998, and up to February 6, 2001, I was subjected to disparate treatment as it pertained to not allowing me to: bring animals to the class class; have a "personal" volunteer assist me; divide my class according to the established criteria for class profiles; to participate in meetings with other teachers, etc. I complained to Mr. Eugene Natson, Superintendent of Personnel. II. Dr. Brenda Shuman-Riley, School Principal, gave no reason for the disparate treatment. III. I believe I have been discriminated against because of my race, Black, and in retaliation for complaining of unlawful employment

practices, in violation of Title VII of the Civil Rights Act of 1964, as amended." [Signed by Brenda Tremble 7/13/01]

NOTICE OF CHARGE OF DISCRIMINATION
(Excerpt D 0115)

Equal Employment Opportunity Commission
[addressed to]
Dr. Lynn Batten
Superintendent of Schools
Bulloch County Board of Education
500 Northside Drive East
Statesboro, GA 30458

Person Filing Charge: Brenda E. Tremble
This Person Claims to be Aggrieved
Date of Alleged Violation: Earliest 05/01/1998 Most Recent 02/06/2001

"You are hereby notified that a charge of employment discrimination has been filed against your organization under Title VII of the Civil Rights Act of 1964"
Basis of Discrimination: Race and Retaliation
[Signed 07/17/2001 by Lynn Jordan, Commission Representative]

GRIEVANCE SUBMITTED TO BCSD
09/24/01
(Exhibit 1 to Brenda Tremble Deposition)
Grievance: Part 1

The purpose of this grievance is to communicate to the Board of Education a series of events that disabled me from being able to continue with my chosen career. In addition to this component, you will find "Work Relations" which will contain dated documentation. Some items in Part 1 are not in Part 2. Many factors contributed to my disability, which includes but are not limited to the following: negligence on behalf of the Bulloch County School System (Eugene Natson, Shirley Cobb, Dr. Batten), negligent supervision (Eugene Natson), and intentional infliction of emotional distress (Dr. Brenda Shuman-Riley, Mrs. Shirley Cobb).

Mr. Natson has known since May of 1999 that Dr. Riley has been mistreating me. This all began as a result of voicing some concerns to Mr. Natson. Initially he told me that the three of us were going to meet to discuss my concerns openly (May, 1999) which he expressed were very legitimate. Then he changed his mind for some unknown reason and left me to be unjustly criticized and harassed by a principal that is angry simply because I wanted to know if what she'd told me in a conference was accurate or not. I did not want to jeopardize my career so I did what I thought was professional and took my concerns to a higher authority. I double-checked the validity of what Dr. Riley had told me. After checking with Mr. Natson, I discovered that Dr. Riley had lied to me (see visiting goddaughter).

After calling Mr. Natson at his place of residence on Sept. 23, 2001 @ 9:00 he led me to believe that Dr. Riley was being held accountable for her actions. He told me on the

telephone "She's being monitored" (see Sept.23, 2001). If I called him at home upset and afraid because Dr. Riley had been searching inside my desk and did not choose to admit it until I told her that I knew about it, he should have been taking action.

When Dr. Riley unjustly and negligently criticized me for letting my son have share time at school, he should have been taking action. If she were being monitored, then he would not have told me in my distress on Feb.6, 2001 "Go home, write her a letter, and tell her how you feel (See Feb.6, 2001)." He had the nerve to tell me that I am too analytical. How much analyzing does it take to know that you're not wanted?

Analyzing and synthesizing is something that we should all do. Isn't that what we teach the students? He saw that I had experienced something traumatic. How can I write a letter in the condition I was in? Why should I write a letter to a hostile principal? That was not a professional or commonsense response to an employee in acute distress. It was his job to supervise Dr. Riley so that I could do what I'm hired to do. It was his job to control her irrational temperament. Because Dr. Riley continuously criticized me, my ability to perform decreased. It's hard to teach when someone is continuously discrediting and retaliating against you.

She did not want to let me teach. From the very first day of being isolated on the second grade hall she has found ways to make me appear to be inadequate. For example, I have been taking attendance since 1990. Just because it wasn't in the office is no reason to impose public humiliation about it. The harder I worked the more she hounded me. I felt as if she wanted to bring out the worse in me so that she would have a

reason to formally reprimand me. Something is wrong when other teachers, such as Anita Hill, are asking me if I document everything (see Nov. 21, 2000). Mrs. Hill shouldn't have had to hide Dr. Riley's prejudice ways by turning in another early pass to make me feel less offended. Something is wrong when you have 2nd grade teachers waiting to wipe your tears when you exit Dr. Riley's office. Mr. Natson was negligent on Feb. 6, 2001 by not following up via telephone or by suggesting that "we" go back to the school to see what's going on the moment I walked into the BOE on Feb. 6, 2001 at 9:00a.m. After telling him that my class had to be divided up and given to Mrs. Hill and Mrs. Bennett, he didn't bother to pay the principals a visit.

He was negligent by never informing me in writing or otherwise as to whether any of my concerns had been properly addressed to Dr. Riley. He was negligent by not following through as he'd planned in the beginning. How can one solve a problem if all involved are not allowed to be in same room at any given time to put things into perspective? That in itself was stressful because I never knew what was being said about me or otherwise. I worked for three days, Feb.7-9, and no one responded to my grief. All they cared about was if I showed up the next day. I was so nervous that I forgot to sign in on Feb. 7, 2001. A co-worker came to my room to tell me that Dr. Riley and others were wondering if I had come in (Saundra Cobb). Mrs. Cobb (speech teacher) did not know of the incident the day before. She stated; " You need to be careful because they are watching you." If Dr. Riley meant me no harm, why did she not come down to my class to see if I was o.k.? Sounds like she was looking for more faults the next day. Did she think that I would come in and violate policy so that she could fire me? From the words of Dr. King, "Let no man bring me down so

much as to hate." I attempted to have a good working relationship with Dr. Riley. She "intended" to harm me. It was obvious that no one from the BOE followed up because Dr. Riley and Mrs. Cobb had three whole days to say that they'd made a mistake. Mrs. Harrell went to Dr. Riley that same day and specifically clarified that I had done no wrong. This sounds like negligent supervision when an employee that has "not" come to the BOE for assistance prior to Dr. Riley's principalship is not taken serious.

Once Dr. Riley knew that Mr. Natson was not going to hold her accountable for how she was treating me, I was an open target to be pounced on at any given time. I didn't have anyone that I could rely on because it was only happening to me. She made sure that I was completely isolated from the other black teachers. It didn't matter if I was communicating what was happening to me because they were not suffering as I was. It was a crime for me to go to the K-1 hall to check on my son, which was not very often. Dr. Riley put me on her hall just for the satisfaction of degrading me. My husband contacted Dr. Batten on Feb. 12, 2001 @ 9:00a.m. to discuss his concerns about my situation, he discovered that Dr. Batten had not been informed about any of the incidents. He told my husband, I'll be getting back in touch with you." He never heard from him.

If Mr. Natson did not know how to handle Dr. Riley, he should have turned it over to Dr. Batten. Speaking of which, was Dr. Riley's work history checked prior to hiring? The fact that I have never come to the Board of Education prior to Dr. Riley's arrival with problem issues should have been a clue that something was wrong. The fact that I contacted the president of the local NAACP, Donnie Simmons, should have been a sign that something was w r o n g . Before I went to Mr. Simmons, I told Mr. Natson that I was considering it: He

said, "It might do her some good" Yes, Donnie Simmons was contacted in approximately May of 1999 "prior" *to* taking the oath of office as board member at the Board of Education. In contacting him he said, "Give me something in writing to take with me." Having a forgiving heart and willing to give Dr. Riley a second chance, I never gave Mr. Simmons anything so he didn't do anything. On Feb. 12, 2001, I took specific documentation with me to Mr. Simmon's residence. He had taken the oath of office and was "now" a Board member. He never responded to date.

Mrs. Shirley Cobb was also negligent because she did not stand up for me when she knew she should have. She purposely did not say anything. Was she scared too? After the incident concerning my one white female student, Dr. Riley never spoke with me unless Shirley Cobb was present. Obviously Dr. Riley had to tell her something about me in order for Mrs. Cobb to know that she would have to witness our conversations. I feel that Mrs. Cobb should have sat in with everybody that Dr. Riley had to talk to. Why just me all the time? Mrs. Cobb knew that I'd done no wrong, but allowed Dr. Riley to tear me to pieces for something she had given me permission to do. She had already decided to let me carry the heat because she knew that Dr. Riley enjoyed degrading me (Feb. 6, 2001). It was easier for Mrs. Cobb to let me suffer than to tell Dr. Riley the truth. Dr. Riley enjoyed making me so miserable that she neglected to call in the teacher that really handled the recess incident (Diane Harrell). She was so eager to jump down my throat until she totally neglected to call in the teacher that she should have been talking to. Why not talk to both teachers at the same time? She did not want me at Sallie Zetterower. This could have been avoided if my Superintendent of Personnel had a plan of action for administrators who breach the system's Code of Ethics. Bullying is wrong and should not be allowed. Intimidation is

wrong and should not be allowed. Mrs. Shirley Cobb was wrong for aiding an offense by not telling Dr. Riley that I didn't do anything wrong on Feb. 2, 2001. Administrators and teachers are supposed to be the model for students, not the other way around. Mrs. Cobb pre-meditated this because she couldn't handle all of the discipline referrals that had come in. She had collected more than she wanted wanted Dr. Riley to know about. She didn't know how to break the news on the number of school referrals so she dumped on me. Why? She knew Dr. Riley didn't like me. Don't you see? I couldn't defend myself without making Mrs. Cobb appear guilty.

A lot of innocent children suffered. I loved them enough to know that I couldn't give them 100%. They deserved to have a teacher that would be allowed to do what she was supposed to do on a daily basis without fear.

Having some EIP students, I learned from Dr. Bishop in a workshop that I needed to use level appropriate materials. I told Dr. Riley and Mrs. Cobb what I needed. Mrs. Cobb took me over to the K-1 wing to borrow some books from Mrs. McArthur. What I needed was a full set of books so that I wouldn't have to walk to and from in all kinds of weather. The point is: messing with me is one thing, but depriving my students is another.

My son couldn't understand why his mother was on pins and needles all the time. He suffered because he did not understand why mommy could not come to work as she usually does without panicking. When a child has a routine, it bothers him if it changes. My absence was a change in routine.

He shouldn't have had to witness my breakdown. He was

still in my room when I returned from the office. A parent was in my room when I returned from the office. Sharing his new puppy should not have been an issue. He should not be deprived of doing what other students do on a daily basis. I am a parent just like any other parent. I am a parent that deserves to be respected. I deserve to do for my child just as others have done for their children. In addition to this, I shared the puppy with my class because they wanted to know what a miniature Doberman pincher looked like. If I didn't work for the school system would Dr. Riley tell me, "You're not to bring a dog to school unless you ask me first" On Feb. 2nd, Dr. Riley was absent. Next in charge is Mrs. Cobb. She was present. She knew I brought the one-pound puppy. She kept it for me in her office. T h e only thing she d i d not do was open her mouth on my behalf. Mrs. Wilson and many other teachers have brought animals to school (See Feb.7, 2001). Mrs. Cobb has known me long enough to know that I do my best at all times. She's the reason I was able to remain at Sallie Zetterower under Dr. Riley's administration. I felt as if I went into shock when she sat there, eyes on Dr. Riley, and didn't even look at me. I felt that she knew me before Dr. Riley and she would be there for me when needed. Now I've lost all trust in her.

Dr. Riley intended to cause me distress. If a co-worker places devil horns on your wedding picture, it's because they know you are not supported and they can get away with it. Yes, my para-pro Cathy Deal put Devil horns on my wedding picture (see Mrs. Deal's surgery) and nothing was done about it; however, Dr. Riley saw Cathy Deal crying at school shortly after her hysterectomy and immediately decided that I was the problem. Cathy expressed to me that she never told Dr. Riley anything in reference to me and that she couldn't understand why she called me in.

Tarra Kirkland tried to convince Dr. Riley that she specifically came to volunteer in my room at my request. She would "not" allow her to stay in my room. Tarra could not believe I was being treated like someone out of the 1800's. For the rest of my life I have to live with the following response when I asked Dr. Riley if I could be on some other committees in addition to Arbor Day: "No you can only plant a tree". I saw it in writing, but I couldn't believe she could look me in the eye and say it. Now that hurts! I thought how did I go from helping her through her 1st year to planting a tree? (See committee form for evidence and also view evidence o f me preparing her for important events).

My family has suffered in more ways than one could imagine. The out of control crying, chest pains, insomnia, etc. makes it extremely hard to maintain the sense of security that they are accustomed to. In addition to this, when my children witness me crying, they cry. How do you explain to your children that you are afraid of the principal at work? How do you explain to your children that you cannot teach again due to administrative negligence? How do you continue to take your child to school after you've been disabled and maintain any level of enthusiasm? Having others to transport my son to and from school on many days was not something that I wanted to do, but I had no choice. I needed to heal.

It was very stressful explaining to my son that I would have to change his school because Sallie Z. made me sick to the stomach. My son had to stress wondering if he'd make new friends. He knew everybody at Sallie Z. I commend him for making this move on mom's behalf. Even entering Mill Creek Elementary School causes me have flashbacks of events that took place at Sallie Z, but I have to maintain because I have to let my children believe that mom will overcome. This is so mentally draining for children because

they can't nor should they have to understand all of this.

It was very painful to be told that they (2nd grade teachers) were allowed to meet and decide which repeaters would be placed in my class based on the color of my skin. Just because I'm black doesn't mean I'm the best teacher for every black child that the other teachers consider unruly. It sounds like I should have been invited to the meetings since I was being designated to teach "particular" students (Sept. 15, 2000). This is another example of how unfair treatment trickles down when others know that they can get away with it. Although the 2nd grade teachers supported me, they also knew that " I " didn't matter to "the powers that be." Dr. Riley had become a pro at intimidating me. I have memos that contain quotes aimed directly at me; however, no one would know this except for me.

In the midst of everything going on I felt that I needed to consult with GAE. I did. Karen Lovette was not available (sick leave). I contacted the Atlanta branch and Wyndy Clark took notes on the phone. Wyndy called me back to tell me that her supervisor said that I didn't have enough information to be referred to an attorney for consultation. I couldn't understand why I should have to pay for a consultation out of pocket when I pay GAE insurance. I needed to know what steps I needed to take to protect myself; however, she told me that it was only an issue of disability. I took the first step as my GAE card tells me to do. If I tell a GAE rep. that I'm being mistreated, then I should be referred. There is no need to pay insurance if they are not going to let you talk to someone. I see this as negligence. GAE is supposed to help it members. She told me that she would fax a copy of her dictation to Karen Lovette. It was received at the Statesboro branch according to the person that answered the phone. When the person that answered the phone told me that Karen

Lovette was not in, she said that she would fax a copy to the Savannah branch so that I could talk to Joe Bell. I didn't know if she faxed it for sure so I called Joe Bell. Joe Bell told me that he was going to call the Statesboro branch and look over the information. I never heard from Joe Bell (Wyndy's notes available).

Having to consider moving is another issue that pressures our family. It's not easy living in a town that has labeled you as the teacher that caused the principal to resign. It didn't have to be this way. Just having to avoid this kind of conversation adds stress and causes friendship to diminish. It's not easy when you're told (by an officer) that you are the topic of conversation at the police dept. It's not easy when you're told (by a book store employee) that you are the topic of conversation at the Ga. Southern Book Store. It's not easy when co-workers avoid you in the store because you're now considered the bad guy. It concerns me that the BOE allowed the faculty and staff to ruin my character by placing a full-page ad of Dr. Riley in the Statesboro Herald. How does it ruin my character? Well, to me the message at the bottom implies that something someone caused her to resign. The faculty and staff appeared concerned about me until Dr. Riley resigned. Now it's a whole different subject. I wish that I could embrace each of my students and tell them how much I hate to leave them. I hope that they will remember me for my good days and not for what they witnessed at the end.

My husband has suffered mentally, physically, and financially. Mentally because he's had to support the family single-handedly when I couldn't perform to my fullest potential. Physically and financially because we were not receiving any/enough money to help support the family causing him to take on extra work to make ends meet. Of course, if

he's working on weekends as well as weekdays, it limits the amount of time he can spend with our children. The Construction work is no easy job. On one job we found it odd that Core Credit attempted to hold his check for ten days for no known reason. Knowing that we needed the money, my husband had to call the person that wrote the check. The person for whom my husband did this job was able to call Core Credit. The hold was taken off. We have never had this problem prior to my disability.

On Aug.8, 2001 at 2:54 I received a message from B.J. Brannen stating that I needed to include a letter of resignation in my Teacher's Retirement Packet. Why should I do this when this is an issue of disability? Since I was worried about this, I had to contact someone qualified to tell me that this was not necessary. This was added stress.

In addition to everything else that's happened to me, the BOE did not see fit to make sure that I received my contract when the rest of the County received theirs. They signed on April 12, 2001. I didn't receive one until April 27, 2001. It was postmarked April 25, 2001. As a matter of fact my contract was postmarked two days after my doctor informed Mr. Natson via medical excuse that he needed to process whatever paperwork is necessary to continue me as an employee. Since it looked completely different and no one informed me that it would, I had an attorney to look it over. When I received it in the mail, it had no return date. Why should I rush when I had valid reasons for being cautious? (Envelopes and doctor's letter available)

On Feb. 16. 2001. Blair Riley answered the phone when I called to check on a fax that my doctor sent. I did not feel comfortable talking to the principal's daughter. I did not realize that she was employed by the school system. Blair Riley

left a message on my phone stating that the fax was not received.

In closing part one of this grievance. I must emphasize how stressful compiling this document has been for me. To have to relive every detail of what happened to me has been hard. I just pray that the next time a teacher has a problem they will be supported by words as well as actions.
*Please note: Work Relations--Part 2 of my grievance contain more dialogue and dates. Some parts may be repeated.

Grievance: Part 2

August. 1998(Prior to preplanning):
Dr. Riley had some questions about instructional orders. Sylvia Tremble and I happened to be on the premises trying to get started early. We were the only two teachers on campus. We were called in to answer her questions. Dr. Riley appointed me as grade rep. on the spot. Since she didn't ask me, I felt obligated to do what had been set before me. I was not offered a choice.

Week of Preplanning: Dr. Riley called a meeting with the people that attended the Reading First training in Atlanta. We were told that we would be the Reading First committee. " I " was listed as the chairperson. She made it dear that I would be responsible for the budget. During this week I was told to pick up Focus materials that we would use along with our Phonics program. I packed and delivered tons of books to the school as instructed. The remaining committee members were not able to help when asked.

The 1st County Office Reading 1st Meeting: I was told to attend this meeting by Dr. Riley. I did. When I arrived, I

noticed that everyone in attendance were principals. I thought that I'd leave if told, but no one told me to leave. Upon returning to school, I informed Dr. Riley that only "administrators" were in attendance. I thought that maybe she would want to inquire with the county office. I didn't want her to get in trouble since she was new to Bulloch Co. She told me that she wanted "me" to continue. I did ---she's the boss! I felt good about what I was doing even though this was my first time being responsible for a $25,000.00 budget. Although it would have been easier for the school accountant to monitor the budget, I didn't feel it was appropriate for me to tell her this. The budget was a learning experience for me as well as others involved. I was also in charge of mandatory meetings that we had to have in order to meet the Reading 1st guidelines. This was difficult b e c a u s e the teachers had a negative attitude about having to difficult because meet with so regularly. I was only doing what had been asked of me. Getting everything going was no easy task, but because I had a student teacher at the time I was able to get a lot done. Mrs. Wilson (a second grade teacher at the time) and I spent an entire Sat working on the "initial" parts of the budget based on Dr. Riley's instructions.

Nov. 20,1998: When the monitor came to evaluate our Reading 1st progress, she asked me to get her ready for this visit (see note attached). The monitor came and of course I didn't get a chance to meet her; however she did thank me for preparing her.

Visiting goddaughter's class: gave me permission to check on my goddaughter. The next day she called me in to tell me that my goddaughter's teacher didn't like that I'd come over during school hours to check on a student and that her husband was going to file harassment

charges against me: I couldn't understand this because Mrs. Vickery and I had a nice informative conversation (I was O. [child's name redacted] 1st grade teacher.

(Exact date not known-1997)
Discipline: (copy of approved discipline plan attached) a parent and her mom are mad because of a promotion/retention letter being sent home at report card time. After conferencing with them, Dr. Riley told me not to keep him in from recess when his butterfly is removed. This went against our approved discipline plan established at the beginning of the year. Of course his behavior got worse instead of better because he knew there would be no repercussions for his negative behavior. A few weeks later the same student was spotted with a toy, but real looking, gun at recess. A student went home and told her mom. Her mom told Dr. Riley. She called me into the office to tell me, "I needed to do a better job of eye-balling my students." I reminded her in as nice a way as possible that I am not to search students or purposely search their book bags. I told her, " If my para-pro and I didn't see it, then we couldn't do anything about it." Not to add that she told me not to follow the approved discipline plan for "this" child.

May ?1999-Approx: I requested to be relieved as grade rep., but - requested to remain Reading 1st chairperson or grade rep. for year 1999-2000. Request was granted without hesitation. Copy of request may be available.

May 1999 ? School improvement Reports: Dr. Riley wanted a summary report at the faculty meeting. I did it. The very next day she tells me that Shirley Cobb will be responsible for Reading 1st the next year because the "principals" were doing it at the other schools. She did not

say anything positive about my year as coordinator. She said, "You need to be in your classroom!" Why did she wait until the "end" of the year to decide that I needed to be in my room? Anytime I was out of the room, it was at Dr. Riley's request. I was confused because I'd previously told her that the principals were coordinating the program at their schools. Why did she change her mind so quick? Also, when I requested to remain Reading 1st coordinator, why didn't she tell me then that Mrs. Cobb would take over as coordinator for the 1999-2000 school year. Although she made me feel worthless, I received a great deal of positive praise from other faculty on my summary report and my overall performance. I began to feel "used".

At End of May: I went to discuss my concerns with Mr. Natson, Superintendent of Personnel. I discussed all of my concerns with him. It was stated to me by him that he had "similar" concerns about Dr. Riley and that I'd done a very good job of expressing her areas of weakness. He thought that we could come together to help her. He didn't have any knowledge of anyone wanting to file harassment charges against me. He appeared to be puzzled as to why she told me this. He wanted the three of us to come to his office to discuss issues of concern. When I called him to see where we would be meeting, he informed me that "she" wanted to talk to me on her own. I felt scared and alone. I was scared because I now knew that Mr. Natson had spoken with her about my very legitimate concerns. I don't know why he agreed to this. On the day of our meeting, I told her my concerns and she told me, "I can be warm and friendly with my family at home. I don't have to be warm and friendly with you at school." I knew that our conversation was at a dead end before it even got started. She was not receptive to an open-ended conversation. Why did he set me up like this? I was now her target.

Summary of 1998-1999 school year: I don't have a problem with the decision not to let me chair Reading 1st next year. I firmly believe that teachers should have equal opportunity. I have a problem with the "way" that she went about things. I gave her every opportunity to relieve me from this responsibility early on in the school year, but she obviously needed me to get her through this year. I now know that I've been used to get her through her 1st year. It was a year of learning and growing for me. I feel disrespected in many ways. I worked so hard that the state dept. got us confused and started to send information in labeled Dr. Brenda Tremble instead of Dr. Brenda Riley. I turned all Reading 1st materials over to Mrs. Cobb (asst. principal) so I do not have any proof of such signed envelopes. I also initiated a televised parent workshop that was such a success that Dr. Riley made it mandatory for every teacher to have one as well. The teachers were not happy about having to do this. *Copy of video available. Although my point in going to talk to Mr. Natson was to better our professional relationship, I could already sense that she was angry with me for going above her head during her first year at our school. She became cold toward me.

New School Year!!! 1999-2000[emphasis in original]
Pre-planning: I always try to start every New Year on a positive note. Dr.Riley says that each new year is a new beginning, however, my positive note was short lived when she stormed into my room to very rudely tell me, "You understand that we are sharing the para-pros!" Those are the helping teachers that assist the teachers. I was embarrassed because she said it so cold and ruthless. She didn't say hello, how was your summer, or anything positive. I very calmly said, "Yes, they just showed up at my door and we were heading over to Mrs. Banks class to decide how we would utilize them." I could tell that she had it out for me, but I just decided to stay out of the way as much as possible. I also noticed that she revoked on her word to let me be grade rep. for 1st grade. This would be a year in time-out.

Jan.2000: Most people are recognized for receiving another degree in a faculty meeting. I haven't been congratulated.

* I began this school year knowing that I would not be a part of Reading 1st, but for some reason she kept "telling" me that Mrs. Cobb, the asst. principal, would be in charge of Reading 1st. In addition to this, she made Mrs. Star Anderson grade rep. for 1st grade.

After Mrs. Deal's Surgery: When Mrs. Deal returned from surgery (hysterectomy) she was very hormonal. She was crying in the library. Dr. Riley apparently walked up on her as this was taking place. She tells Dr. Riley that she doesn't know if she's doing her job right. Dr. Riley calls me in to question me. This was the first time I'd known that Cathy wasn't sure of her responsibilities. I knew that Cathy was new, but she was doing a good job as far as I was concerned. I had a notebook that clearly stated what she

needed to do each day. I never tried to stress her out or anything. I knew that some things would come with time and experience. I told Dr. Riley if anyone should be crying it should be me because I have a picture on my desk of my husband and me and someone put "devil" horns on my head. Later, Cathy admitted to doing this, but I still have reservations as to whether it was really a practical joke or not. When I told Cathy that I was called in, she appeared surprised. She said, " I never told her that you had anything to do with me crying. I told her it was my hormones." Cathy later got a patch to control this problem. I could tell that Dr. Riley would be jumping down my throat if she even thought I might be involved in something.

Student's eating habits: Mrs. Cathy Deal (helping teacher) noticed that a student was eating sweets only for lunch. When she informed me, I thought I'd write a note to his mother. The mother had some concerns about the note, took the note to his doctor, and came to see Dr. Riley about the note. The parent didn't like the note, but she did start sending healthier lunches. The parent was also concerned about a comment that I had made in reference to his eating habits in the child's presence. Dr. Riley stated, "You should not have mentioned the child's eating habits in front of the child." I didn't see it as a problem because it was on a child's level, but I accepted the constructive criticism and went on.

I was not allowed to grow much this year because Dr. Riley didn't allow me many opportunities. I felt that she was mad because I voiced my concerns about her to Mr. Natson.

End of Year: I was called into the office. Both principals were seated. Dr. Riley explained that she would be moving me to second grade for the coming school year. This meant that I would now be on the hall with her. I hoped that things would get better.

New School Year!!!2000-2001 New Grade-2nd grade!!! [emphasis in original]

* I really wanted to transfer, but I couldn't accept the one offer that Mr. Natson offered me because of my children. I felt that she was moving me to her hall for personal reasons, but I was going to be positive about the upcoming year.

Week of pre-planning: I noticed that I was listed to serve on only one committee, Arbor Day/playground/grounds. I had a problem with this because she had told us at the end of the 1999-2000 that she wanted every teacher in the curriculum areas that taught reading and math or science, social studies, and health. Since I was in a new grade I needed to be in the curriculum areas to become more knowledgeable of 2nd grade content. Even the newest teacher, who was also not in the curriculum area, was put on a committee for which she could grow (see committee sheet attached). I decided to be professional and ask her if I could be utilized on another committee in addition to Arbor Day. She said, "No, that's all I want you to do is plant a tree." She never looked at me again. I walked out of her office, back to my room, and cried.

Aug. 2000: About two weeks into the school year, I went to Dr. Riley to discuss the lack of "balance" in my classroom. Although I only had two white females due to students that never showed up, I was more concerned about "academic" balance instead of racial balance at that time. She told me that my class was just as balanced as the other 2nd grade teachers. I guess she forgot that I knew most of these students from the previous year in 1st grade. She totally disagreed with me. I guess she thought that I was the only one that noticed the imbalance, but the extension teacher, Mrs. Harrell, had noticed it as well. She clearly

stated, "Your highs do not compare to their highs". She knows this because she teaches science, social studies, and health to all 2nd graders. I assured Dr. Riley that I would do my best regardless. Although it wasn't mentioned, I couldn't understand why I had only two white girls, and I counted at least four to seven white females in the other 2nd grade classes.

Aug. 20,2000: Dr. Riley saw me on the breezeway and told me that I was holding up the office from doing the attendance. My attendance had been in the tray like the other 2nd grade teachers, but no one collected mine. When I reached my door, it was still sitting in the tray. All had been picked up by school patrols except mine. I'm beginning to think the woman enjoys making me feel bad. The other 2nd grade teachers saw my attendance in the tray also. This happened fairly often throughout the school year. I felt like someone was doing this to me on purpose. I started to recheck myself so often that I was confusing myself.

Aug.28, 2000: Principal wrote me a note concerning Accelerated Reader folders. Curious as to how she knew all of this, I checked with Mrs. Newland to see what I'd done wrong that required her to go to Dr. Riley. I reminded Mrs. Newland that she could come to me when I make a mistake because I'm new in 2nd grade. I went to get clarification from Dr. Riley on the matter. She says to me, " I have staff "designated" to tell me things." At that point, I told her, "Mrs. Newland told me that you were "standing" there when one of my students happened to be checking out a book and the folder was not marked with a reading level." She looked shocked that I knew she was not telling me the truth. What she didn't know was that the student that was sent back to the room without a library book couldn't read at any of the levels for AR was struggling with writing

information in his folder. If Dr. Riley would keep an open mind instead of jumping down my throat we might be able to pull things together. Why did she need people to tell on others? The word "designated" bothers me. It makes me nervous. I feel like I'm walking on eggshells every day.

Sept 5, 2000: one of my white female students moved. A few days later one of my black female students had to transfer to Langston Chapel

because she moved into that school zone. That left me with one white and two black females in my homeroom class. I now knew for sure that my class was not balanced racially, academically or by gender. I didn't have a problem with this, but I thought the white female needed a friend with whom she could relate or at the most be given a choice of friends to choose from. I knew from observation and from talking with the white female's mother and grandmother that there was an ongoing personality conflict between one of the black students, which began in kindergarten.

Sept. 8.2000: I had a scheduled conference with Dr. Riley to go over the strengths and weaknesses of my class. She stated, "I know that your class is not balanced and I'll have to do something about this by Monday (Sept. 11th). I said, "Dr Riley I mentioned that the last time we met". She says, "It was balanced until you lost the white student" I felt that if losing one white female student throws off the balance that significantly then it must not have been balanced initially, but I didn't comment since she clearly stated, "changes would be made."

Sept. 11-14: Sept. 11th came and there was no mention of changes. On Thursday Sept.14th the white female student made a threatening statement to a black male student at lunch

(I did not witness this because I was eating lunch). The white female was defending a black female student in my class. The black male that she threatened was able to say the same thing to the extension teacher and me. The extension teacher came to me and we concluded that it had to be written up. The principal followed through with discipline procedures.

Sept. 15, 2000: the white female's mother came to my room. The parent said, "I'll be back in thirty minutes. I wanted to talk to the parent about her daughter's A.R. scores, but the parent rushed away and never came to my room. She appeared irate so I went to the office to find out what I should do if she comes back. Mrs. Cobb instructed me to send her to the office if she does not sign in. At 1:30 Dr. Riley called me in to discuss what the mother said. I was so intimidated by the way that she treated me in the past that I decided to record our conversation so that there would not be any questions later. She did not have very much to say about the threatening statement made by the student; however, she proceeded to tell me that the mother had some concern about the student's A.R. log. Obviously, the student had been taking tests without thoroughly reading and had been reading out of her reading range which caused her to fail a couple of the A.R. tests. We discussed this issue. I told her, " I was going to talk to the mother, but she didn't come back to the room. I'll erase any tests that she didn't do well on and start over again. I'll try to do a better job of checking her folder, reading range, and the computer to make sure that she can feel more successful at A.R." I told her, "It's hard to see everything that happens because they work independently in the mornings and I'm usually trying to help students that have trouble reading or can't read at all." I also stated, "E [student's name redacted] wants other students to read to her instead of reading books to herself". She agreed that I couldn't let E interfere with other students' reading time. She

says to me, " I want you to make sure E is happy." I questioned what she meant by this. I said, " I have a lot of students that need me and I will treat all of them fairly." I said, "I have always treated my students fairly even before you came here." This did not make me feel comfortable. I said, "What if I can't make her happy by your definition or her mother's definition of happiness no matter what I do?" I said, "Dr. Riley, what if something else comes up?" This was the 3rd time E's mother had to be notified of a discipline problem. Two occurred before the other white female left and the 3rd took place after the student withdrew. The first time involved throwing a French fry in the lunchroom in which I notified the parents myself. No disciplinary form was filled out. Her mother responded with a note that basically elaborated on the fact that E was startled and the French fry just kind of flew out of her hand. She was also concerned that the people on lunch duty need to give specific information on discipline problems. This note was given to Dr. Riley on Sept. 15th to have on hand for her conference with E's mother in case this incident came up. It has not been returned to me as of yet. The 2nd incident involved E telling a student the following: "Shut your tail up". Her grandmother said, "It was not in her vernacular of something that E would say." Please note: three-discipline problems took place when I was not around, two at lunch and once in transition. If I remember correctly, the first two discipline problems occurred before the other white female withdrew. The last one definitely happened after the white female student withdrew. I had no control over any of the situations. What if her discipline gets worse?" I was feeling a heavy load now. I felt that this student was going to be defended by her mother and grandmother no matter what she did. I didn't know exactly where Dr. Riley was coming from with all of this. It sounded as if she (Dr. Riley) was coercing me to break the policy. Since we were on the

subject of my only white female student, I brought up another concern, which was the fact that some of her behaviors could have something to do with her not having a friend in the class. I had observed this student searching for a way to fit in all week. She said, " Obviously she has a friend because she got in trouble taking up for R. [student's name redacted](black female). I said, "that could be an indicator that she is so desperate for a friend that she'll do anything to have one." By this time I was crying. I couldn't understand where she wanted this conversation to go. I reminded her that she told me on Sept.8th that she would be making some changes. She said to me, "how can I make a change at this point in the year? She tried to blame the imbalance on 2nd grade teachers. I told her, "We all worked on dividing Mrs. Harrell's class according to race, gender, and academics and it was not our job to go back and look it over. She said, "You've had parents to "request" you before--you know how that is?" I said, "yes, but I thought an administrator had to look all data over." Even with parent requests you have to draw the line." I reminded her that we, 2nd grade teachers, are not administrators and that it's an administrator's job to review this information. I asked her, "Has E's mom recognized that she is the only white female in my class"? She said, "Yes, I believe she has". Thinking that this was against policy and that another school had underwent a similar situation that was dealt with by the NAACP, I left her with this statement: " I will not lie for you. If a board member or anyone else recognizes that my class has one white female, I will not be able to cover for you. I gathered my things, and went to see Mr. Natson. He listened to my story. He agreed with me that she couldn't be the only white female in my class and that Dr. Riley should have known better because of the incidents at the other school. I told him that I was scared. He assured me that everything would be okay, told me to have a good weekend,

and that Dr. Riley was on her way over. When I walked out of his office, she was sitting on the couch.

Sept. 15, 2000: when I returned to school to gather my things, Mrs. Harrell knew that I was frustrated by all of this. She voluntarily provided the following information: "The only student that we got together on to put in your class was J R [student's name redacted]" (a black repeater in 2nd grade that they obviously did not want in their class). If they, the 2nd grade teachers and Dr. Riley, got together on this particular student then wouldn't it make since to invite me to the meeting? She also stated, "we thought that he would benefit more by having a black teacher". It started to sound like my whole class was a "fixed" deal.

Sept. 22, 2000: I had to take a half-day leave due to my son's illness. Mrs. Howard, the Substitute teacher, told me the following: "Dr. Riley came into your room and searched inside your desk. She said, "I think she had left out with your report cards". She never mentioned that she had to help Dr. Riley in any way whatsoever. Dr. Riley had already seen them once. I knew that I had one very minor correction to make, She saw me that same day and never mentioned that she had gotten them. If she needed to see them again, why not wait until I return to work and ask for them? Was she really looking for the report cards? I don't think so. Could she be setting me up? This makes me nervous. Later I discovered that she'd e-mailed on Sept 21st requesting to see my revised report cards. I e-mailed her back on the 25th --no response, but the message did not come back undeliverable so I knew she received it. On the 26 I responded to her original message via reply and received a response, but again she lied because the substitute clearly stated, "Dr. Riley searched inside my desk." Mrs. Howard did not say that she helped Dr. Riley "find" the report cards (e-mail on

next page). This was totally out of character for her to go in a teacher's desk. Normal procedure is for her to request something, we give it to her, and she returns it to our own personal mailbox that is located in the production room across from the office. She is aware that we don't always get e-mails immediately. It is much easier for her to return something to the mailbox than it is for her to walk all the way down the hall to my class. In addition to this Mrs. Howard does not know any more about my desk than Dr. Riley (is supposed to know).

Sept.23,2001 (at 9:00: I called Mr. Natson on Sat morning scared because I was thinking that because she didn't tell me that she went in my desk that she might be trying to set me up. I started to think she might plant drugs or something in my desk to get me fired. He assured me that she was under "monitoring" and that I had nothing to worry about. If he discussed the desk issue with her, I was never told. From this point on she never spoke with me privately. The assistant principal was always included whenever she had to say something to me.

Sept. 17, 2000: I called E's mom around 9:00. The mother told me that she was preparing for a yard sale because she would eventually be moving. I asked her, "Does that mean E might not be finishing out the year with me?" She said, " I don't know for sure at this time". She talked about the amount of miles she was traveling each day and how early she has to leave in the mornings. We discussed E's reading and resolved the confusion about A.R.. She brought up the female student in my class that E has a personality conflict with. She talked a little about E's behavior and how the 3rd incident could have happened because of the physical and verbal abuse that E witnessed her dad doing to her mom. We ended our conversation by going over my plan of action

to help Elise with A.R. Our phone call ended on a good note.

Sept. 18, 2000: Dr. Riley met with 2nd grade teachers. She said that she couldn't figure out any other way to do this except to move the student to Mrs. Bennett's class. She claimed that "they" had been working on this all along, but couldn't find a way to fix the problem. She said, "the change would take place after she talks with the mother." She kept reiterating that "she" would be the one to tell her mother.

Sept. 19, 2000: Dr. Riley told me in the hallway that E's mom told her that they were not moving. She said, " I don't know if her mom wants her moved. I'm waiting to hear from her."(8:40)

Sept.19, 2000: Came to library during my BLT testing and said, "I'm going to go ahead and make this move."(9:00) She didn't see the importance of having me there for this transition. This move left me without any white females. Any new white females that moved into the system could not be placed in my room because they'd be the only one? Is that helping the situation or is that revenge?

Date not known but can be retrieved: I was gathering and completing the records of a student that withdrew from school. The school secretary asked me to leave them on her desk because she was going home. I told her I would. The records are yet to be found. What happened to them? I do not know, but they were out of my possession. I hope this doesn't go down in my file because I did what the school secretary told me to. The only person that was still in the office was Dr. Riley. She usually confronts me about everything possible, but she never mentioned the missing file (very unusual).

Nov. 21. 2000: I needed to go to a Doctor's office for a follow-up on a previous visit. I could not find either principal to get my 1:30 early pass pre-approved. The school secretary, Diane Long, told me to go on. I assumed that she had done this for other teachers and it would be okay since she seemed so sure of herself. She said, "I will tell Dr. Riley where you are and that you will be returning to school." I had previously told Dr. Riley that I had a problem with my arms swelling and the doctor was trying to figure out what was causing the problem. I also told her that this particular doctor is only in Statesboro on Fridays. She said, "It will be okay since the visits are short. The visit was not lengthy at all. Upon returning, I checked my mailbox and found a note stating that I had to turn in an additional early pass since I didn't get the 1:30 pre-approved (see note next page). I went into her office to inquire about it. She, of course, had Mrs. Cobb nearby. I went to my room, got an additional early pass, and set it on her desk. I said, "thanks for asking about my health" and left out of the office. Later that night I called the school secretary to inform her that I had gotten in trouble about not getting the early pass pre-approved. She was surprised that Dr. Riley reacted this way. It was obvious that Mrs. Long had done this for other teachers before and it wasn't a problem.

*I had to stop by the Board of Education to fill out some paperwork. Mr. Natson asked me how my year was going and I shared the early pass incident with him: When I told him how I responded, he said, "Good, your statement sent out a strong message"(date unknown).

*A few weeks later, Anita Hill (2nd grade teacher- white) comes to me and says that she had a similar situation with her early pass and Dr. Riley did not ask for an early pass so

she voluntarily gave one to Dr. Riley. Of course she took it because the subliminal message was that I know you took one from Mrs. Tremble so you need to take one from me as well.

Nov.? 2000: Kathy Deloach (4th grade teacher at the time) stops me to ask if the balancing of my class was resolved. I said, "yes, as best as they could resolve it. During a teacher leadership meeting, I was told that she came down hard on Dr. Riley about her class profile. Before the Christmas break, she announces that Kathy Deloach will be the new Quest teacher (gifted program) after the Christmas holidays because the county decided that every school needed their own Quest teacher. The big picture is that K. Deloach humiliates the principal in front of a group of people about similar concern and gets what she wants. I try to respect her by talking with her privately and she can only help me by leaving me without any white females. After the Christmas break, Deloach moves into the Quest room located next door to me. I believe that Deloach used my situation to help her situation.

Feb.2, 2001: My son wanted to take his new one-pound puppy for share time. His teacher had been asking me to let him bring her on share day. He brought her. When I walked my son over to his class, we discovered that Mrs. Page was not in. When asked, Mrs. Dixon (a regular substitute) said, "He can still share his puppy. I don't mind." I told her that someone could bring the puppy back to me as soon as they are finished with her. I thanked her for letting him go ahead with this since we did not know that Mrs. Page would be out. On my way back to class, I saw Mrs. Cobb (asst. principal). Knowing that she is an animal lover, I said, "I've got something for you to see in D's [student's name redacted] class. It has

four legs and it had a bath last night so it should smell alright." She laughed and said, "I'm heading that way right now. About two hours later Mrs. Dixon brought the puppy back to me. I thanked her again. She told me that my son had a goodtime sharing and they enjoyed her. She went on to tell me that Mrs. Cobb had come over to pet the puppy and informed me that Mrs. Cobb was a good dog sitter. I told one of my co-workers that I was taking the puppy over to Mrs. Cobb's office and that I would meet her on the playground for recess duty. Mrs. Cobb willingly kept the puppy. When recess was over, I used my bathroom time to go back and pick the puppy up. Mrs. Cobb told me that I could leave her until lunchtime, which was only 30 minutes away, if I wanted to. I said, "I don't want to keep you from doing your work. She said, "It will be okay since she's in a carrier." I told her I would take her home on my lunch break if it were okay with her. She said, "okay". On my way back to class Mrs. Harrell stopped me to tell me about some boys that had jumped on another boy at recess time. She suggested we write them up since the other boy was crying. I agreed. When Mrs. Cobb received the referrals, she said, "I don't have enough room in time-out for them. Just make them miss three days of recess next week." She stated, " I cannot call the parents since neither one of you saw the fight." She also made a statement that implied that Dr. Riley would not be in a good mood once she sees all the referrals that she had in her hand. Mrs. Harrell and I felt that we had to do what was done.

Feb 5 2001: Absent Dr. Appt.

Feb.6, 2001: When I got to work, I was called over the intercom to come to Dr. Riley's office. She told me to have a seat. She told me that she was waiting for Mrs. Cobb to

come in. When Mrs. Cobb entered, Dr. Riley sat down at her desk and said the following: " I heard you had a dog at school when the teacher wasn't there and that the fighting took place while you were tending to your dog." " I very calmly said, "yes, my son wanted to share his puppy and we didn't know Mrs. Page wasn't here until we arrived." I went on to tell her that Mrs. Dixon told me that she did not mind letting him share since the puppy was at school. Dr. Riley says, "You are not to bring a dog to school without asking me first" Since I had gotten approval from Mrs. Cobb on my every move on Friday, why wasn't she supporting me? I went to second in charge since Dr. Riley was not at school on the 2nd of Feb. The parent handbook does not state that the parent has to check with the principal to bring a caged pet to school. The puppy only weighed 1.5 pounds at the time. She was properly immunized and had a clean health record. Mrs. Cobb just sat there. She never even looked in my direction. I knew that I was a couple of minutes late for recess duty, but I couldn't understand what my puppy had to do with the referrals on the boys that had been fighting. She never asked me any objective questions about Friday. I felt like a child instead of a thirty-six year old woman. Feeling sick and betrayed inside, I simply said, "I'm sorry. My son just wanted to share his puppy for share day. I didn't know that Mrs. Page wasn't here." Mrs. Cobb never even looked at me. I knew that I couldn't win if I mentioned that Mrs. Cobb approved my every move because then she would become my enemy. I had no way out. I refused to be insubordinate. When Dr. Riley dismissed us, Mrs. Cobb had a sigh of relief on her face. Upon returning to my class, I started to cry in front of my students, my son, a 2nd grade teacher, and a parent-volunteer. My son wanted to know why I got in trouble for bringing his puppy to school on share day. He was hurting inside. Dr. Riley didn't know that my son was still in my classroom. The students were upset

seeing me cry. I was sick. I buzzed the office for a substitute. The 2nd grade rep. came down the hall with Mrs. Cobb. I am unable to even look at her. My class is split between the two 2nd grade teachers and Mrs. Cobb along with the second grade teacher told me to go home. The parent that was in my room couldn't believe she treated me so harshly. The 2nd grade teachers said, "you're a parent and you haven't done anything that any other parent would do for their own child. The parent-volunteer said, "I bring animals all the time and I never check with the principals." The students in the other 2nd grade classes were upset as well because I taught them in 1st grade or had gotten to know them on the playground. We tried to make it look as if I was just sick as opposed to being upset; however, it turned out to be both.

Same Day: I leave school torn apart and confused. I go to the county office to talk to anyone in sight. I'm crying and shaking. Again, I end up talking to Mr. Natson for the third time concerning Mrs. Riley. He suggests that I write her a letter because he's trying to get her to understand how she makes people feel. I don't see the need since she is obviously power hungry and very insensitive to me as a teacher and as a parent. I expected him to see how much I needed someone on my side. Why should I write a letter that could be used against me later, regardless of how careful I word it? I've been begging for help for two, almost three years and no one responds to my cry. All I seem to get is lip service. I honestly thought, since it was at 9:00 in the morning and I had to leave school because I couldn't take anymore of her torturing, that he'd get up, go over to her office, and support me like a real superintendent.

*Shirley Cobb (asst. Principal) was the one person I trusted since she'd known me longer than Dr. Riley. This

county knows that I am an honest educator that would do no one any harm. I supported Dr. Riley when others were skeptical. I made her look good as a first year principal and she doesn't find me useful for anything, but planting trees and dumping trivial problems in my lap. Now that I can no longer trust either one of my superiors and I can't rely on the superintendent, I do not know what to do.

Still Feb. 6, 2000: I begin to have chest pains. When I arrive at the Cardiologist they are able to see me. After leaving the Doctor's office, I went home to rest before going back to the doctor's office for further testing, I get my nerves together to go and pick up my son. Mrs. Harrell comes down the hall to Mrs. Bennett's class where I am. She reassures me of two things. She tells me that I "was" out to duty when the fight took place and that I was tending to the student that had thrown the rock when the other student came up to her crying about some boys fighting him. She says, "I'll go and tell Dr. Riley the facts if you think it will help." She did. She also tells me on my voice mail that she did not say anything to Mrs. Cobb or Dr. Riley about the dog because she didn't see where I'd done anything wrong. I couldn't understand why Dr. Riley was so abrupt with me, especially not allowing me a chance to speak. The 2nd grade teachers told me that they would do anything I wanted them to do. I felt that they were tired of seeing me unjustly criticized. Being the only black teacher on my hall, I didn't know if others were noticing how harsh I was being treated. It was no secret now, they knew. He promised me that nothing would happen to me, and now this.

Feb 7th-9th: No apologies, No Hello, No nothing!!! [emphasis in original] I thought Dr. Riley would realize her mistake after talking to Mrs. Harrell and at least say I didn't

mean to ruin your day. Why did the Assistant Principal let me get dumped on like this? Please help me. On Feb. 7th, the two principals were walking down the breezeway. I had to step to the side to keep them from hitting me. I was scared and sick. They did not speak nor have they called me personally to ask how I'm doing to date. When I take my son to school, I don't get out of the car, but they've never come over to the car to see how I'm doing. My doctor thinks it is best if I stay away from the premises in order for me to heal. I now understand that it was the series of events that brought me to this point. The final incident was just the icing on the cake.

Feb. 12th (at 9:30: my husband called Dr. Batten (school Superintendent) to discuss his concerns about my situation. He discovered that Dr. Batten had not been informed about any of the incidents that had taken place. He told my husband that he would be getting back in touch with him. No call from Dr. Batten to date.

* Janice Wilson (1st grade teacher- white) informed me on Feb.7th at 2:30 that she brought two puppies to school that spent the entire day in the production room that is directly across from the office. It's okay for her to share her puppies and leave them all day, but I'm unjustly criticized for a puppy that stayed for a couple of hours.

* Mrs.. Klutz (3rd grade teacher-white) came through my room when the incident happened and expressed that she brings animals regularly and she never ask either principal.

Please read part one and part two carefully

Time-line of Events That Led To Disability:(Quick Scan Grievance) 1998-1999:

* Unfairly used me to chair a program then inappropriately dismissed me at the end of the school year when my state test scores were not as high as the "other" first grade teachers.

*Unjustly criticized me for visiting goddaughter's school when she (Dr. Riley) had given me permission to do so.

* Forced me not to follow our "approved" discipline plan for one particular student then unjustly criticized me when his behavior worsened.

**Consulted with the Superintendent of Personnel concerning these issues. He didn't follow through as planned (mediation) which allowed me to be her target for intentional infliction of emotional distress.

1999-2000:

* Extremely hostile attitude in front of co-workers on the first day of the school year.

*Unjustly criticized for para-pro's (helping teacher) stress.
*Excessively rude when a parent complained about a note sent home concerning a student's unhealthy eating habits.

Moved me to her hall!!! 2000-20001 [emphasis in original]

* Only allowed me to serve on a very low-performance committee even after asking her if I could do more to grow as an educator. Told me, "You can only plant a tree this

year."

** my name showed up for a safety committee meeting on e-mail. When I arrived and asked if I was supposed to be there, Shirley Cobb (assistant principal) responded, "You can sit down."

* Forced me to break the policy concerning my class profile that consisted of only one white female. Knowing that another local school had just gone through a similar situation that was handled by the NAACP, she wanted me to "Keep my mouth closed." Another teacher that had a similar problem was given the Quest position (gifted students).

** "Someone" was playing tricks with my attendance causing me to be unjustly criticized by Dr. Riley.

**2nd visit to Mr. Natson concerning her attitude toward the classroom situation and me. Told me, "She knows she can't do that."

* White female student was moved out of my room, leaving me without any white females. Therefore, any incoming white females could not be placed in my class.

* As a result of a library incident, she told me the following: "I have people designated to tell me things." How can I work like this?

* Placed a black student (male) in my class after meeting with the 2nd grade teachers (all white) only. Did not bother to invite me to the meeting. Mrs. Harrell shared this information on Sept. 8th at 4:30 p.m. following my visit to Mr. Natson. Direct quote: "The only student we

got together on for you was J]" "We felt he would do better with a black teacher.

* Dr. Riley searched inside my desk when I left early. She blamed it on the substitute teacher. She did not admit it until I brought it to her attention via e-mail.

** Phone call to Mr. Natson to inform him. He said, "She's being monitored." "You don't have anything to worry about"

* Unjustly criticized about recess incident that she "thought" involved a one-pound puppy that my son brought for share-time.

*Distracted my son's positive emotions and his regular routine (he was in my class when all of this took place---so was a parent volunteer (Mrs. Chandler).

* Asst. Principal was aware of my every move, but failed to support during this harsh and very hurtful verbal reprimanding. She did not say anything on my behalf nor did she look at me. *Please note:* A white teacher (Janice Wilson) brought two puppies during the 1999-2000 school year that stayed all day. My puppies were only there for half-day.

**Begged for help from Superintendent of Personnel (Mr. Natson). No support! Told me the following: "Write her a letter and tell her how you feel."

* Wednesday following the incident, both principals walked up on me so close that I had to step to the side to let them pass. I worked three days following this incident and neither principal spoke nor did they try to make amends.

* Would not allow me to teach in a peaceful environment.
* Contracts and evaluations have been signed, but no one has notified me. I was also not notified that I would not receive any money for the month of March.

** Please read the full documentation for specific details.

[End of Document]

Exhibit 1 to Brenda Tremble's Deposition

(R6-111-[Att. B, Ex 46] Excerpt D 0616)
DEFENDANT RILEY'S HANDWRITTEN NOTES

I finally ended the conversation [with Brenda Tremble] by standing up also and saying I was sorry she felt penalized, that I would be remiss in my duty to not try to help keep teachers on task and informed of concerns from parents, that I had been continuing to try to work on this issue [classroom imbalance] (had submitted a proposal to D. Bath, Natson, & Batten) on Monday, 9-11-00) on same issue she [Brenda Tremble] didn't even know about) but I couldn't create additional children.

(R6-111-[Att. B, Ex 47] Excerpt D 0650)
DEFENDANT RILEY'S HANDWRITTEN NOTES

4-9-01: Conference with Natson and Batten on personnel needs for next year. Got to B. Tremble – said he had gotten the disability papers from "Jarvis Burke" (friend of B. Tremble) who indicated she might be unable to return even next year. I point blank asked if she would be returning to Sallie Zetterower and he said I was jumping the gun – hands were tied and needed to avoid anything that might give cause for a lawsuit. Burke had said that is what she was looking for. I told him everyday I felt like I was having to put out fires with staff over questions, no matter how small, over her status, and did we really want her with children? I said I hate to put it as a situation of "it's either me or her" but I felt I would/could not be effective if she was back on the same staff with administrators and teachers she left without even contacting us (me or Ms. Cobb). Batten and Natson both said I was over reacting and it looked like with time, the situation would be resolved without us ever having to do anything. I said if she comes back, will she return to Sallie Zetterower, Natson said possibly.

(R6-111-[Att. B, Ex 48] Excerpt D 0651)
DEFENDANT RILEY'S HANDWRITTEN NOTES

4/23/01: Conference with Dr. Batten about job for 01-02. Told him I would not want to return if both Tremble and I were placed at same school.

(R1-33-Ex C] Excerpt)
DEFENDANT BATTEN'S OCTOBER 2, 2001 LETTER TO BRENDA TREMBLE

Dear Ms. Tremble:

I received the document which you describe as a grievance on Tuesday, September 25, 2001. I am writing to notify you that your grievance was not filed in a timely manner or in accordance with proper procedures, therefore, will not be processed. Nevertheless, while I disagree with your presentation and interpretation of the facts in your document, I do regret that you have bad feelings about your work with the School System.

I understand that you are in the process of applying for disability retirement. I understand that some of the papers have been received by the Teacher's Retirement System, but not all. I would encourage you to complete the application process and wish you well in that endeavor.

Please talk with Ms. Brannen or Mr. Natson if you have any questions.

s/Lynn Batten
Superintendent
c: Mr. Eugene Natson, Jr.

(R1-35-Ex B] Excerpt)
BRENDA TREMBLE'S OCTOBER 8, 2001 RESPONSE TO BATTEN'S OCTOBER 2, 2001 LETTER

This letter is in response to your letter that I received on Oct. 3, 2001. I would like to begin by thanking you for your interest in the status of the application for disability retirement I have since talked with Mrs. Brannen concerning the forms. In addition to this, Janeen Bennett at TRS has informed me in writing that my application is now complete and has been sent to the medical board for further consideration.

Although I was pleased with your I interest in my retirement forms, I am very shocked and stressed by your response to my grievance. Your words caused me more agony as opposed to support. I viewed this letter as a scare tactic. The front page of the grievance is the one that lets you know it is the official form used for filing a grievance. I did not have to "describe" the grievance because the front page does that for me. Unless the State of Georgia is wrong, I have filed in a timely manner and in accordance with proper procedures for "disabled" employees. I am enclosing the guidelines for your reference. By reading the policy, I hope that you will understand why I am still eligible to file grievance. According to your letter, I was saddened to read that you have already developed an opinion about my grievance before taking it through the grievance process. I strongly feel that an opinion cannot be formed without completing the process. Even though you disagreed with my presentation and interpretation of my document, I found hope when you acknowledged that the information contained "facts".

By re-reading the grievance again, you will better

understand that I loved my career. Students have the right to be educated. I did not have bad feelings about my work with the school system as you stated. I had bad feelings about Dr. Riley's intentional infliction of emotional distress that distracted my performance. I had bad feelings about Shirley Cobb neglecting to support me when she should have. I have bad feelings about Mr. Natson neglecting to respond and protect me. Last but not least, I now have bad feelings about you (Dr. Batten) not processing my grievance according to Governor Roy E. Barnes' policy. I choose for my grievance to be acknowledged at the local level, but I will be forced to inform the State level if my grievance is not properly processed. October 9, 2001 was the deadline for you to respond to my grievance (see 1X-C). After gaining more insight for employees that are medically disabled, I would encourage you to respond to my grievance in a timely manner. If I do not receive a response to my grievance by the end of the week, I will assume that you are not going to process my grievance and will follow through accordingly.

s/Brenda Tremble

(ENCLOSURE TO BRENDA TREMBLE'S OCTOBER 8, 2001 LETTER)

STATE OF GEORGIA
OFFICE OF THE GOVERNOR
ATLANTA 30334-0900
Roy E. Barnes
Governor

POLICY: EMPLOYEE GRIEVANCE PROCEDURE
PAGE: 1 of 6
(UNCLASSIFIED SERVICE) DATE: August 20, 1999
EFFECTIVE : September 30, 1999

Purpose
The Executive Branch of the *State* of Georgia recognizes the need for a consistent process for resolution of non-disciplinary employment concerns for employees in the unclassified service. This procedure is established to provide eligible employees with an orderly process for addressing employment conditions or decisions in a timely manner.

I. Disclaimer
This grievance procedure is provided to employees as a guideline for expressing concerns about employment. The procedure does not compromise the rights of management to direct the workforce in accomplishing the agency mission. This process is not applicable to disciplinary matters and does not alter the employment at-will relationship between the agency and its at-will employees.

II. Policy

It is the policy of the State of Georgia to maintain a standard of personnel administration which assures fair and equitable treatment of employees. In that regard, every employee eligible toile a grievance as defined in this policy may do so without fear of unlawful discrimination or reprisal.

A. Agency Heads will ensure that all employees within their respective agencies are aware of this policy.

B. Employees and respective supervisors/managers are encouraged to make reasonable attempts to identify the issues/contentions involved and seek to remedy any disputes prior to a written grievance being filed. The effort to resolve disputes may include (but is not limited to) the use of mediation. Such efforts must be handled in a manner that will permit the employee to meet deadlines established by this policy and procedure for the filing of a grievance.

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C. Any state officer, supervisor, management representative or employee who attempts to harass, intimidate, or retaliate against any-employee, state officer, supervisor or management representative as a result of filing a grievance, providing testimony or evidence regarding a grievance may be subject to disciplinary action.

D. The decision of the Agency Head is final.

III. Eligibility

A All unclassified employees except those listed in Paragraph B, below, are eligible to file a grievance.

B. The following employees are not eligible to file a grievance:

1. Employees who have been notified of *suspension,* demotion, disciplinary salary reduction, or separation from employment.

2. Employees seeking relief through other administrative or judicial procedures.

IV. Definitions

Agency Grievance Coordinator means the person designated to be responsible for receiving grievances, determining grievability, and tracking the processing of grievances.

Agency *Grievance Review* Official means an individual designated to conduct grievance reviews for unclassified employees. This individual will be designated by the Agency Head or Designee *and* will be an impartial individual with relevant prior experience in employee disputes.

Filing means the act of an employee submitting a State grievance form to the Agency Grievance Coordinator.
Grievance means a claim by an eligible employee that the employee's personal employment has been affected by unfavorable employment decisions or conditions due to unfair treatment.

Receipt means the date and time at which a document is delivered to the addressee by mail, facsimile or personal delivery.

Workday means a Monday through Friday business day exclusive of State holidays.

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V. Grievance Issues

A Grievable issues are:

1. Allegations of unlawful discrimination because of race, color, sex, national origin, disability, age, or religious or political opinions or affiliation.

2. Allegations of sexual or other forms of harassment.

3. Retaliation for using this grievance procedure.

4. Erroneous, arbitrary or capricious interpretation or application of personnel policies and procedures.

5. Unsafe or unhealthy working conditions.

B. Grievances alleging unlawful discrimination based on race, color, sex, or sexual harassment, national origin, disability, age, religious or political opinions or affiliation, will be reviewed by the agency head/designee and will be processed in one of the following ways:

1. Allow the grievance to proceed through the grievance procedure. Or

2. Investigate the grievance pursuant to a procedure designed specifically for unlawful discrimination complaints, in which case the procedural time limitations may be extended by 30 work days. Or

3. Advise the grievant, in writing, that the agency has

concluded processing the grievance and that the grievant may present the matter to the Georgia Commission on Equal Opportunity or the Equal Employment Opportunity Commission.

C. Non-grievable issues include but are not limited to the following:

1. Issues which are pending or have been concluded by the Georgia Commission on Equal Opportunity, or through other administrative or judicial procedures.

2. Performance responsibilities, expectations, and evaluations.

3. Temporary work assignments.

4. Budget and organizational structure, including the number or assignments of positions in any organizational unit.

5. The selection of an individual to fill a position, unless it is alleged that the selection is in violation of an agency's written policy.

6. Termination, demotion, reassignment, furlough, layoff from duties because of lack of work, or other actions resulting from a reduction in the work force or job abolition.

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VI. Representation

A Employees may represent themselves or be represented *by* a third party of their own choosing, provided the third party is an employee of the agency to which the grievant is assigned, who has been properly authorized for absence from regular work duties.

B. All state agencies will make a reasonable effort to authorize a third party representative to be absent and to provide up to four hours duty time per grievance for the purpose of assisting the grievant Such time shall be during regular work hours, without loss of pay or leave credi's. Employees will not be authorized work time to serve as a third party representative or to assist in grievance preparation for more than two grievances per calendar year. Time spent as a participant in a grievance review meeting will be considered work time.

C. A non-employee third party representative is not permitted unless required by law or applicable rule.

VII. General Provision

At any point in the procedure, a grievance may be referred to mediation. Any party to a grievance may request that the grievance be referred to mediation. The Agency Grievance Coordinator will make the final determination regarding the appropriateness of mediation referral for the grievance.

A. At the sole discretion of the grievant, a grievance may be voluntarily withdrawn at *any* point in the procedure. A withdrawn grievance shall not be refiled. To withdraw a grievance, the employee will notify the Agency Grievance Coordinator in writing.

B. Employees needing assistance in processing a grievance may contact their Agency Grievance Coordinator.

C. Agencies may consolidate grievances as follows:

1. Multiple grievances filed by an employee may be consolidated into a single grievance.

2. Separate grievances filed by two or more employees regarding the same issue(s) may be consolidated into a g'oup grievance.

D. A grievant will be allowed reasonable time, as determined by the Agency Grievance Coordinator to prepare a grievance. Such time shall be during regular work hours, without loss of pay or leave credits. Preparation time shall include such activities as meeting with witnesses and reviewing the grievant's personnel file. Such time is independent of any time spent in a grievance review session with the Agency Grievance Review Official. The Agency Grievance Coordinator shall have the authority to resolve *any* dispute regarding

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the determination of reasonable and necessary time for processing a grievance.

VIII. Time Provision

A The grievance is considered filed when stamped received by the Agency Grievance Coordinator.

B. The first day of any time provision in this grievance procedure will not be counted

C. Upon agreement of all parties to a grievance, *any* time limit specified in this policy may be extended, not to exceed 90 calendar days.

D. The Agency Grievance Coordinator may extend any time limit specified in this policy due to emergency, medical disability or legally mandated absence on the part of the grievant. The grievant will be notified immediately of the reasons for and the length of the extension.

E. In the event of an emergency situation, the Agency Grievance Coordinator may suspend the right of grievance under this procedure.

F. A suspension of the eligibility to file a grievance may delay but will not otherwise prejudice any grievance filed before the effective date of the suspension, nor will any grievance filed within 15 workdays after the period of suspension has expired be denied or otherwise limited.

IX. Procedure

A The grievance must be submitted on the Standard Grievance Form to the Agency Grievance Coordinator, within 10 workdays after the occurrence upon which the grievance is founded or within 10 workdays after the employee becomes aware of the problem. The Agency Grievance Coordinator may grant a waiver or an extension of the filing deadline.

B. The grievance must contain a statement of the issue(s) involved, how the grievant's employment has been unfavorably affected, the relief sought, and the date(s), if known, the incident(s) or violation(s) occurred. If the grievance involves the interpretation or application of policy or procedure, the grievance must identity the policy or procedure at issue and describe how it was erroneously interpreted or applied.

C. Within 10 workdays of receipt of a grievance, the Agency Grievance Coordinator will review the grievance to determine the grievability of the issue(s) and provide written notice to the parties that:

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1. The issue is non-grievable, including the specific reasons for the determination, and that the grievance process is being terminated. Or

2. The issue alleges unlawful discrimination and will be processed according to the provisions of a separate complaint procedure for allegations of unlawful discrimination. Or

3. The issue is grievable under this procedure.

D. Agency Internal Review Process

1. Within 15 workdays of the notice that an issue is grievable, the Agency Head/Designee will appoint an Agency Grievance Review Official.

2. Within 15 workdays of assignment, the Agency Grievance Review Official will undertake any of the following actions with regard to the grievance: conduct a grievance review of the grievance issues based upon available information presented: or conduct a grievance review by meeting with the parties to facilitate an agreement, clarify and/or interpret policies, or explore alternative resolutions.

3. Barring prior settlement of the grievance by agreement of the parties, the Grievance Review Official shall submit a written recommendation to the Agency Head within 10 workdays of conducting the grievance review.

4. The Agency Head will review the findings and recommendation(s) of the Grievance Review Official and issue a decision in writing within 10 workdays of receipt of the recommendation. The decision of the Agency Head will be final and will conclude the grievance process.

(R1-35-[Ex C] Excerpt)
DEFENDANT BATTEN'S OCTOBER 11, 2001 LETTER TO BRENDA TREMBLE

Dear: Ms. Tremble:

I am responding to your correspondence dated October 8, 2001, which I received on Wednesday, October 10, 2001. I must explain that the State of Georgia policy to which you refer is a grievance procedure designed for employees of a Georgia state agency who are in what is termed the "unclassified service." The Bulloch County School System is not a Georgia State agency to which the grievance policy applies. Furthermore, you are a certificated employee of the Bulloch County Board of Education and not a classified or noncertificated employee. The grievance which you have submitted was not timely filed under the grievance policy available under Bulloch County Board of Education policy and State law for certificated employees. Consequently, I must reiterate that your grievance will not be processed.

Meanwhile, I am pleased to hear that you have completed the application process for your disability retirement and continue to wish you well in that effort.

S/Lynn Batten
Superintendent
c: Mr. Eugene Natson, Jr.

(R1-35-Ex D] Excerpt)
BRENDA TREMBLE'S OCTOBER 13, 2001 RESPONSE TO BATTEN'S OCTOBER 11, 2001 LETTER

Dear Dr. Batten,

I appreciate your prompt response to my last letter. Although you feel that I did not file in a timely manner, the fact that I was medically disabled still remains. It is so unfortunate that the last letter did not specifically state that I should have used the grievance form provided by the Bulloch County Board of Education. You stated on Oct. 2, 2001 that I did not file in accordance with proper procedures. You never told me what the procedures were. On Feb. 6, 2001, Mr. Natson did not tell me what the procedures were. Mr. Natson heard my complaint on Feb. 6, 2001. He should have given me the grievance forms used by the Bulloch County School System. He only told me to write her (Dr. Riley) a letter. Providing the grievance forms would have been more professional than telling me to write Dr. Riley a letter in my distress. GAE (Atlanta, Ga.) did not tell me what the procedures were. GAE (local branch) never followed up. Therefore, I used what I had access to.

With all of this in mind and in lieu of my illness, I would like to appeal. If there is a form for appealing at the local level, please send it. If this letter can serve as an appeal, a written response is needed. Along with the written response, whether the appeal is granted or not, I need the proper grievance forms and guidelines including instructions and addresses on forwarding the grievance to the next level(s). Apparently Bulloch County Board of Education does not consider employees that are medically disabled. Please respond in writing why medical disability

is not considered, especially when the illness is work related.

Despite the issue of the grievance forms, it is very important for the State of Georgia to know what has happened to me, therefore all relevant information will be forwarded accordingly. A response to this letter is needed by Oct. 17, 2001.

s/Brenda Tremble

BULLOCH COUNTY SCHOOLS STUDENT HANDBOOK 1998-1999
(R6-111 [Att.B, Ex 75] Excerpt)

BULLOCH COUNTY SCHOOLS STUDENT HANDBOOK 1999-2000
(R6-111 [Att.B, Ex 76] Excerpt same text)

BULLOCH COUNTY SCHOOLS STUDENT HANDBOOK 2000-2001
(R6-111 [Att.B, Ex 77] Excerpt same text)

POLICY ON DISCRIMINATION

The Bulloch County Board of Education does not discriminate on the basis of race, color, national origin, sex, physical handicap, religion or age in employment practices or in admission to or participation in any educational programs or activities. Sexual harassment is an act of discrimination and is not tolerated. The Bulloch County Board of Education is an Equal Opportunity Employer.

Questions, concerns or complaints relating to the nondiscrimination policies and practices of the Bulloch County School System should be addressed to the following officials:

Eugene Natson, Spencer Beckum, Personnel Director, Section 504 and Equal Opportunity Americans with Coordinator and Disabilities Act Title IX Coordinator.

Mr. Natson and Mr. Beckum are located at the Bulloch County Central Office, 500 Northside Drive East, Statesboro, Georgia 30458; Telephone (912) 764-

6201.

EFFECT OF STUDENT HANDBOOK

The policies, rules and regulations shown in the Student Handbook for Bulloch County Schools are regulatory in nature and are not to be construed to give rise to any substantive or vested rights. The Board of Education, the superintendent, and the principal reserve the right to amend, suspend, repeat, modify, or revoke the policies, rules and regulations at any time as to any students or related persons without incurring *any* obligation with respect to the old or existing policy, rule, regulation, or administrative Procedure. The ultimate administrative responsibility for the school is vested in the principal who must each situation, whether disciplinary or administrative, from the perspective of what is in the best of the student concerned, the other students in the school, and the ongoing educational mission of the school and of the Bulloch County School System.

[End of excerpt]

(PLAINTIFF'S AMENDED COMPLAINT (R1-10-2)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff,

v. Civil Action No. 6:01-CV-134

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, Individually and in His Official Capacity as Superintendent of the Bulloch County School District; EUGENE NATSON, JR., Individually and in His Official Capacity as Assistant Superintendent for Personnel of the Bulloch County School District; SHIRLEY COBB, Individually and in Her Official Capacity as Assistant Principal of Sallie Zetterower Elementary School; and BRENDA SHUMAN-RILEY, Individually and in Her Official Capacity as Former Principal of Sallie Zetterower Elementary School,
Defendants.

FIRST AMENDED COMPLAINT

I

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff Brenda E. Tremble submits her First Amended Complaint, as follows:

INTRODUCTION

This is an action for employment discrimination, retaliation, deprivation of federally-protected rights, and related tortious conduct in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); 42 U.S.C. § 1981 ("Section 1981"); 42 U.S.C. § 1983 ("Section 1983"); Title VI of the Civil Rights Act of 1964, as amended, *42 U.S,.C. §§ 20004 et seq. ("Title VI");* Title IX of the Education Amendments of 1972, 20 *U.S.C. §§ 161 et seq.* ("Title IX"), and the statutory and common law of the Sate of Georgia.

JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§1331 and 1367(a).

2. Venue appropriately lies in this District and Division pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff is an African-American femalecitizen of the United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court.

4. Defendant BULLOCH COUNTY SCHOOL DISTRICT ("BCSD" or "School District") is a political subdivision of the State of Georgia, a body corporate with the capacity to sue and be sued, and is subject to the personal jurisdiction of this Court. Defendant BULLOCH COUNTY SCHOOL DISTRICT is a recipient of federal financial assistance within the meaning of Title VI and Title IX.

5. Defendant LYNN BATTEN is an individual white male who, on information and belief, is a citizen of the

United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court. Defendant LYNN BATTEN is currently and at all relevant times to this Complaint was the Superintendent of the Bulloch County School District.

6. Defendant EUGENE NATSON, JR., is an individual African American male who, on information and belief, is a citizen of the United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court. Defendant EUGENE NATSON, JR., is currently and at all relevant times to this Complaint was the Assistant Superintendent, for Personnel of the Bulloch County School District.

7. Defendant SHIRLEY COBB is an individual white female who, on information and belief, is a citizen of the United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court. Defendant SHIRLEY COBB is currently and at all relevant times to this Complaint was the Assistant Principal of the Sallie Zetterower Elementary School, which is a part of the Bulloch County School District.

8. Defendant BRENDA SHUMAN-RILEY is an individual white female who, on information and belief, is a citizen of the United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court. Defendant BRENDA SHUMAN-RILEY was at all relevant times to this Complaint the Principal of the Sallie Zetterower Elementary School, which is a part of the Bulloch County School District. Defendant Brenda Shuman-Riley is no longer employed by the Bulloch County School District.

FACTUAL ALLEGATIONS

9. Plaintiff began her employment with Defendant BCSD in 1994 as an elementary school teacher. At all times relevant to this Complaint, Plaintiff was assigned to Sallie Zetterower Elementary School.

10. Throughout her employment, Plaintiff received favorable performance reviews and was performing in an acceptable manner and to the reasonable expectations of her employer.

11. Defendant Brenda Shuman-Riley ("Dr. Riley") was assigned to be Principal of Sallie Zetterower Elementary School beginning in the 1998-99 school year.

12. Upon her arrival, Dr. Riley appointed Plaintiff as grade representative for the first grade. She also appointed Plaintiff to chair the school's Reading First program and to oversee the program's $25,000 budget. Plaintiff performed both tasks in a highly competent and effective manner.

13. Despite having initially appointed Plaintiff to these positions, Dr. Riley's other actions toward Plaintiff during the 1998-99 school year led Plaintiff to believe that she was being unfairly targeted for criticism and discipline on the basis of her race.

14. At one point during the 1998-88 school year, Dr. Riley had given Plaintiff permission to go to another school to check on her goddaughter (whom she had taught as a first grader the previous year). The following day, Dr. Riley told Plaintiff that a teacher at the other school had complained about the way Plaintiff treated her during this visit and that someone was going to file unspecified harassment charges against Plaintiff. Plaintiff did not understand this complaint,

because she and her goddaughter's teacher had a productive conversation regarding her goddaughter during Plaintiff's visit the previous day. Plaintiff later found out that the no one had made any type of harassment complaint against her.

15. On another occasion, after Plaintiff, had prohibited a student from attending recess following the student's misbehavior in class, Dr. Riley intervened and instructed Plaintiff not to remove the student from recess again, even if he misbehaved. Later, after the same student was discovered playing with a real looking toy gun during recess, Dr. Riley chastised Plaintiff for not properly supervising and disciplining her students.

16. In or, around May 1999, following these incidents, Plaintiff complained to the Assistant Superintendent for Personnel, Defendant Eugene Natson, Jr. ("Mr. Natson"), about what she believed to be Dr. Riley' 's discriminatory treatment of her. Instead of intervening to address the problem, Mr. Natson simply referred Plaintiff's complaints back to Dr. Riley , who, in turn, angrily dismissed Plaintiff's concerns out of hand.

17. Following Plaintiff's complaints to Mr. Natson, Dr. Riley's discriminatory treatment of her intensified.

18. At the end of the 1998-99 school year, and following Plaintiff's complaints to Mr. Natson, Dr. Riley removed Plaintiff from her position as chair of the Reading First Program and selected the Assistant Principal, Defendant Shirley Cobb ("Ms. Cobb") for that position. Dr. Riley also relieved Plaintiff of her duties as grade representative. Plaintiff had previously indicated to Dr. Riley that she wanted to continue serving in one of those two capacities.

19. In January 2000, Plaintiff was awarded a master's degree in Education from Cambridge University.

20. Typically, when a faculty member at Sallie Zetterower Elementary received a new degree, she would be recognized by Dr. Riley in a faculty meeting. However, in this instance, Dr. Riley failed to recognize Plaintiff's receipt of her degree. Dr. Riley never failed to recognize white, teachers who had been awarded advanced degrees.

21. At the end of the 1999-2000 school year, Dr. Riley informed Plaintiff that she (Plaintiff) would be teaching second grade for the 2000-01 school year. Unlike the first grade classrooms, where Plaintiff taught in all her other years at Sallie Zetterower, the second grade classrooms were located on the same hall as Dr. Riley's office.

22. At the end of the 1999-2000 year, Plaintiff requested a transfer to another elementary school to escape the oppressive conditions at Sallie Zetterower. However, the school offered by the School District was not an acceptable option for her, given her child care duties.

23. Shortly before the beginning of the 2000-01 school year, Plaintiff discovered that Dr. Riley had assigned her to serve on only one school committee: Arbor Day/Grounds/ Playground. Typically, teachers are assigned to serve on more substantive committees where they could become more knowledgeable about curriculum content and where they could develop additional skills to use in the classroom. When Plaintiff specifically asked Dr. Riley to be assigned to other more substantive committees, Dr. Riley remarked something to the effect of, "No! All I want you to do is plant a tree."

24. In or around August 2000, about two weeks into the 2000-01 school year, Plaintiff went to Dr. Riley to discuss a concern that she had that her classroom was not as racially, sexually, and academically balanced as other second-grade classes at Sallie Zetterower. Plaintiff knew, from having taught these students the previous year as first-graders, that her class had significantly fewer white females than other second-grade classes. This disparity in class assignments was also noted by other teachers at Sallie Zetterower. Dr. Riley rejected Plaintiff's contentions at that time.

25. On or about September 8, 2000, Plaintiff again met with Dr. Riley to discuss her concerns about the racial, sexual, and academic balance in her classroom. In that meeting, Dr. Riley begrudgingly acknowledged that Plaintiff's class was not balanced and promised to rectify the situation the following week. Plaintiff also addressed her concerns to Mr. Natson. He too admitted that there was a problem with the racial and sexual balancing in Plaintiff's classroom and assured Plaintiff that he would rectify the situation.

26. Several days later, Dr. Riley informed Plaintiff that she would be removing the only white female student from Plaintiff's class and placing her into another class with other white females. This left Plaintiff without any white females in her classroom.

27. Plaintiff also learned, on or about September 15, 2000, that Dr. Riley and the other second grade teachers had met earlier in the school year without Plaintiff being present or invited and decided to place a black male student who was repeating the second grade into Plaintiff's classroom. The justification for this decision was that the individuals present

at that meeting thought that the student would benefit more by having a black teacher.

28. On or about September 23, 2000, Plaintiff called Mr. Natson to complain about an incident that occurred the previous day, wherein Dr. Riley searched through Plaintiff's desk while she was on a half-day leave tending to her son. Dr. Riley was ostensibly looking for Plaintiff's report cards; however, it was quite unusual for Dr. Riley to go through any teacher's desk. Usually, Dr. Riley would ask the teacher for something, the teacher would provide it, and then Dr. Riley would return it to the teacher's mailbox near the main office. Plaintiff began to fear that Dr. Riley was attempting to set her up to be fired.

29. Upon listening to Plaintiff's concerns, Mr. Natson assured her that he was monitoring Dr. Riley's behavior and that she had nothing to worry about. Nevertheless, after that incident, Dr. Riley refused ever to speak with Plaintiff alone. Usually, Dr. Riley would have Ms. Cobb present during any conversation with Plaintiff.

30. On or about February 2, 2001, Plaintiff's son (then a first-grade student at Sallie Zetterower Elementary) brought in his new puppy to share with the class as part of a "share day." The puppy was in a secure carrier and weighed less than two pounds at the time. Plaintiff's son had obtained Permission in advance from his teacher, Mrs. Page, who also had mentioned to Plaintiff that she looked forward to seeing the puppy; however, Mrs. Page was absent on the day that Plaintiff's son brought the puppy to class. When Plaintiff discovered (in walking her son to class that day) that Mrs. Page was absent, she was informed by Mrs. Dixon, the substitute teacher, that her son could nevertheless share his puppy with the class and that she did not mind.

31. On her way back to her class, Plaintiff saw Ms. Cobb in the hallway and told her about the puppy that her son had brought to school. Ms. Cobb (an avid animal lover) smiled and stated that she would stop in and see the puppy. Later, Ms. Cobb willingly agreed to attend to the puppy until Plaintiff's lunch break. At no time did Ms. Cobb ever indicate to Plaintiff that there was anything wrong with having the puppy on the school grounds.

32. On or about February 6, 2001, Dr. Riley (who had been absent on February 2) summoned Plaintiff over the intercom to leave her classroom and come to the office. Once there, Dr. Riley reprimanded Plaintiff, in Ms. Cobb's presence, for having a puppy in school without permission the previous day. Although Ms. Cobb had been aware of and willingly attended to the puppy the previous day, she said nothing in Plaintiff's defense. Other white teachers had previously brought in pets without obtaining advance permission from Dr. Riley or Ms. Cobb, and they were not reprimanded. Furthermore, there was no policy of the School District or of Sallie Zetterower Elementary School that prohibited bringing animals on the premises.

33. After receiving that reprimand, and upon returning to her classroom, Plaintiff became visibly ill and grief-stricken. She began to cry in front of her students and her son, none of whom could understand what had just transpired. Unable to continue teaching her class, Plaintiff buzzed for a substitute teacher. Ms. Cobb obtained coverage for the class and then ordered Plaintiff to go home for the day.

34. Immediately upon leaving the school, and still visibly shaken and crying in the wake of her unjust

reprimand, Plaintiff went to Mr. Natson and begged for him to intervene. Mr. Natson's only suggestion was that Plaintiff should write a letter to Dr. Riley expressing her feelings. Plaintiff declined to do so.

35. On or about February 12, 2001, Plaintiff's husband called the Superintendent of the Bulloch County School District, Defendant Dr. Lynn Batten, I and expressed his concerns over how Plaintiff had been treated by school officials. Dr. Batten assured Plaintiff's husband that he would look into the situation and report back to him. Dr. Batten never did so.

36. From approximately September through November 2001, Plaintiff attempted to communicate with Dr. Batten – by way of detailed correspondence and formal grievance - in an effort to achieve a resolution of her many complaints about the way that she had been discriminated and retaliated against by the School District and its individual agents. However, Dr. Batten refused to consider the substance of Plaintiff's requests for assistance, ostensibly on the grounds the requests were not submitted on the proper form and in the proper manner.

37. Ever since the February 2001 reprimand, Plaintiff has been unable to resume her teaching duties. She has experienced extreme physical and emotional distress arising out of that reprimand, prior unfair reprimands, the cumulative effect of her treatment under Dr. Riley's and Ms. Cob's supervision, and the unwillingness of Mr. Natson and Dr. Batten to resolve any of her concerns. As a result thereof, Plaintiff has been determined to be completely unable to work at the present time.

38. As a result of Defendants' extreme and outrageous conduct, Plaintiff currently is suffering from a

variety of psychological disorders, including but not limited to major depression, anxiety, and panic disorder, as well as a host of other physical difficulties. Plaintiff and her family have also experienced significant economic distress as a result of Defendants' actions.

39. On the advice of her physicians and! mental health providers, and as a result of her continuing disability arising out of the February 2001 puppy-share incident and previous instances of disparate treatment at the hands of Defendants, Plaintiff applied for and obtained an early retirement from the Bulloch County School District. The effective date of Plaintiff's retirement is December 1, 2001.

40. On or about July 13, 2001, Plaintiff filed a Charge of Discrimination with the EEOC alleging race discrimination and, retaliation on the part of the School District, in violation of Title VII. The EEOC issued a Notice of Right to Sue to Plaintiff on or about August 30, 2001. This lawsuit is being filed within 90 days of Plaintiff's receipt of her Notice of Right to Sue.

COUNT I: DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VII

41. The previous Paragraphs of this Complaint are incorporated herein by reference.

42. Defendant Bulloch County School District has, through the actions of its supervisory agents, intentionally, maliciously, recklessly, willfully and/or wantonly discriminated against Plaintiff on the basis of her race and interfered with the benefits, terms, privileges, and conditions of her employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, by (among other ways):

a. Removing her as Chair of the Reading First Program and/or as grade representative;

b. Failing to recognize her for achieving her advanced degree;

c. Undermining her efforts to train, mentor, and discipline students;

d. Subjecting her to harsh and unfair criticism and discipline;

e. Subjecting her to different arid more difficult conditions and restrictions with respect to the taking of leave; and

f. Forcing her to treat white or multiracial students more favorably than black students and punishing her when she did not.

43. When Plaintiff complained to her superiors about the unlawful discrimination and harassment to which she was being subjected, Defendant School District (through its supervisory agents) retaliated against her, in violation of Title VII.

44. As a result of Defendant School District's unlawful actions, Plaintiff has suffered severe emotional distress, mental anguish, and humiliation, in addition to her economic losses. Further, as a result of Defendants' intentional, malicious, willful, reckless, and/or wanton conduct, Defendant School District is liable to Plaintiff for punitive damages.

COUNT II: RACIAL DISCRIMINATION IN VIOLATION OF 42 U.S.C. §§ 1981 and 1983

45. The previous Paragraphs of this Complaint are incorporated herein by reference.

46. As a result of the intentional, willful, malicious, wanton, and/or reckless conduct of Defendants Batten, Natson, Cobb, and Riley, as previously described in this Complaint, Plaintiffs right to make and enforce contracts including but not limited to the right to the enjoyment of all benefits, privileges, terms, and conditions of said contractual relationship was infringed by Defendants on the basis of Plaintiff's race, in violation of 42 U.S.C. § 1981.

47. By violating Plaintiff's rights under 42 U.S.C. § 1981, and by their other conduct as previously alleged in this Complaint, Defendants Batten, Natson, Cobb, and Riley were, at all times relevant to this Complaint, acting individually and under color of state law to subject Plaintiff to the deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States, in violation of 42 U.S.C. § 1983.

48. As a result of Defendants' unlawful actions, Plaintiff has suffered severe emotional distress, mental anguish, and humiliation, in addition to her economic losses. Further; as a result of Defendants' intentional, malicious, willful, reckless, and/or wanton conduct, Defendants are liable to Plaintiff for punitive damages.

COUNT III. DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VI

49. The previous Paragraphs of this Complaint are incorporated herein by reference.

50. Defendant School District is a recipient of federal financial assistance within the meaning of Title VI of the Civil Rights, Act of 1964. Defendants Batten, Natson, Cobb, and Riley were, at all times relevant to this Complaint,

employees of the School District acting individually and under color of state law in the performance of their duties and specifically with respect to the actions taken in regard to Plaintiff's employment.

51. By complaining to Defendants regarding the alleged discriminatory assignments of students to classes in Sallie Zetterower Elementary School on the basis of race, Plaintiff sought to secure rights guaranteed by Title VI and its implementing regulations.

52. By complaining to Defendants regarding the alleged racially discriminatory treatment and interference with the benefits, terms, privileges, and conditions of her employment to which she was being subjected at the hands of her supervisors, Plaintiff sought to secure rights guaranteed by Title VI and its implementing regulations.

53. In response to Plaintiff's complaints, Defendants individually and collectively intimidated, threatened, coerced, discriminated, and retaliated against her by taking the actions previously described in this Complaint.

54. As a result of Defendants' unlawful actions, Plaintiff has suffered severe emotional distress, mental anguish, and humiliation, in addition to her economic losses. Further, as a result of Defendants' intentional, malicious, willful, reckless, and/or wanton conduct, Defendants are able to Plaintiff for punitive damages.

COUNT IV. RETALIATION IN VIOLATION OF TITLE IX

55. The previous Paragraphs of this Complaint are incorporated herein by reference.

56. Defendant School District is a recipient of federal financial assistance within the meaning of Title IX of the Education Amendments of 1972. Defendants Batten, Natson, Cobb, and Riley were, at all times relevant to this Complaint, employees of the School District acting individually and under color of state law in the performance of their duties and specifically with respect to the actions taken in regard to Plaintiff's employment.

57. By complaining to Defendants regarding the alleged discriminatory assignments of students to classes in Sallie Zetterowver Elementary School on the basis of sex, Plaintiff sought to secure rights guaranteed by Title IX and its implementing regulations.

58. In response to Plaintiff's complaints, Defendants individually and collectively intimidated, threatened, coerced, discriminated, and retaliated against her by taking the actions previously described in this Complaint.

59. As a result of Defendants' unlawful actions, Plaintiff has suffered severe emotional distress, mental anguish, and humiliation, in addition to her economic losses. Further, as a result of Defendants' intentional, malicious, willful, reckless, and/or wanton conduct, Defendants are liable to Plaintiff for punitive damages.

COUNT V. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

60. The previous Paragraphs of this Complaint are incorporated herein by reference.

61. Defendants Batten, Natson, Cobb, and Riley, by their actions as previously described in this Complaint, individually and collectively engaged in a pattern of

intentional or reckless conduct, which was extreme and outrageous. As a direct and proximate result of Defendants' conduct, Plaintiff suffered severe emotional distress, mental anguish, and humiliation, in addition to her economic losses. Further, as a result of Defendants' intentional, malicious, willful, reckless, and/or wanton conduct, Defendants are liable to Plaintiff for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff demands a judgment in her favor against Defendants, jointly and severally, as appropriate in each case, and requests the following relief:

a. A declaration that Defendants' actions, policies and practices complained of herein violate the rights of Plaintiff as secured by Title VII, Section 1981, Section 1983, Title VI, Title IX, , and/or Georgia law;

b. An order enjoining Defendants from violating the above referenced federal statutes in the future;

c. Compensatory, punitive, liquidated, and other appropriate damages (including back pay and front pay);

d. Pre- and post- judgment interest;

e. Costs and reasonable attorneys' fees in this action; and

f. Such other and further relief as the Court deems appropriate and in the interests of justice.

Trial by jury is demanded on all counts so triable.

Dated this 15th day of February. 2002.

Respectfully Submitted,
s/Bradley E. Heard
s/Gwendolyn Fortson Waring (Local Counsel)

AFFIDAVIT OF BRENDA E. TREMBLE
(R6-98)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff,

v. Civil Action No. 6:01-CV-134

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, Individually and in His Official Capacity as Superintendent of the Bulloch County School District; EUGENE NATSON, JR., Individually and in His Official Capacity as Assistant Superintendent for Personnel of the Bulloch County School District; SHIRLEY COBB, Individually and in Her Official Capacity as Assistant Principal of Sallie Zetterower Elementary School; and BRENDA SHUMAN-RILEY, Individually and in Her Official Capacity as Former Principal of Sallie Zetterower Elementary School,
Defendants.

AFFIDAVIT OF BRENDA E. TREMBLE

On this day, BRENDA E. TREMBLE personally appeared before me, the undersigned notary public. After I administered an oath to her, upon her oath, she said:

1. "My name is Brenda E. Tremble. I am competent to make this affidavit. The facts stated in this

affidavit are within my personal knowledge and are true and correct.

2. The purpose of this Affidavit is to communicate to the Court the facts of the events that indicated to me that I was being discriminated against because of my race.

3. I first went to Defendant Natson toward the end of the 1998-1999 school year, because I felt my job might be in jeopardy in the near future based on how Dr. Riley's attitude had changed toward me. During that first visit, I discussed the following concerns:

a. I wanted to discuss with Natson what happened prior to Pre-planning for the school year 1998-1999. Dr. Riley had some questions when Sylvia Tremble and I happened to be on site. Diane Long came on the intercom and asked me to come to the office to answer questions for Dr. Riley. Mrs. Sylvia Tremble and I both arrived to the office at the same time. I was very happy to do this, namely, helping our new principal. Dr. Riley had questions about instructional materials that had been ordered and delivered prior to her arrival, such as workbooks, reading books, etc. We were adding on the Saxon Phonics Program and she wanted to make sure that other programs would not interfere with Saxon Phonics. I also answered a host of other questions relating to Language Arts Curriculum. I responded to the majority of the questions because the questions were relevant to grades 1-3 and Sylvia Tremble only had experience in Kindergarten. Apparently, I made a good impression on Dr. Riley because she immediately appointed me as Grade Representative (Grade Rep.) for the First Grade teachers, and of course, I felt good about that. But what I did not feel good

about was the fact that I was not given a choice, and that's the part I discussed with Natson as one of my concerns.

b. Also, another matter happened during the week of pre-planning for the school-year 1998-99: Dr. Riley called a meeting with the people that had gone to the Reading First Training. Dr. Riley told us that we would be the Reading First committee, and she had me listed as the Chairperson. Suddenly, I was totally responsible for the Reading First program, budget and all! While I fully expected to be participating as a member of the Reading First committee due to training that took place at the Reading First Workshop in Atlanta, Georgia, I was not expecting to be the Project Director. I was appointed to attend this training by Defendant Shirley Cobb, but she never told me that I was going to be appointed as the Project Director; I pretty much assumed that Cobb or our new principal was going to be the Project Director, not myself. Even though I was happy to receive my first significant committee assignment, I had no idea of the impact it would have on me in the classroom, with Dr. Riley, and with my coworkers. Basically, the white teachers didn't like taking directions from me, and I can only attribute it to my race, as I have not observed them making such a fuss about following orders from white teachers who were chairs of other committees. This was another issue that I was concerned about and discussed this concern with Natson. Although I saw the chairperson of the Reading First program as an opportunity to display more of my capability, I still felt I was being intentionally overburdened and I did not want this to become a pattern where I would always be saddled with what I thought was part of the Principal's job being shifted to me unfairly.

c. I related to Natson what I perceived from the first Bulloch County School District Reading First meeting of

project directors. I told Natson that I was told by Riley to attend this meeting and I did as she instructed. I related to Natson that after the meeting, I informed Riley that only principals were apparently handling the Reading First program in their school. I told Natson that this would have been a good time for Riley to pull me from this major position, but instead, Riley told me to continue. I did as she instructed to do, after all she was the boss, and I felt I was doing a great job with the exception of a few budgeting items that I didn't know very much about. After all, The training in Atlanta, GA. focused on training the teachers how to train other teachers at their respective schools on how to teach reading, administer the Basic Literacy Test, utilize games and other strategies to help reach every child, as well as phonics. However, the part that concerned me the most, and that I wanted to discuss with Natson, was when the State Monitor came to Sallie Zetterower (Sallie Z.) to evaluate our Reading First progress. I was very much looking forward to meeting with the Monitor, since I had been doing all of the Project Director's work. Dr. Riley came to me and asked me to prepare her for the meeting with the Monitor, and I did, but I didn't think that Riley was going cut me out of the picture altogether when the Monitor came. That is what happened. On the day of the Monitor's visit, I was all dressed and ready to meet the Monitor, but never got the opportunity. Dr. Riley appeared at my classroom door and said that she was sorry that I did not get to meet the monitor and that they came by during my recess duty. In fact, it was so noticeable of a sight that one my white coworkers tried to joke with me about it saying something to the effect, "Looks like you got all dressed up for nothing!" That really hurt me inside, I was highly embarrassed and humiliated; I felt used by Dr. Riley, and I felt like a fool, but I somehow swallowed my pride and kept going. It dawned on me at that point that she had taken the monitor to this teacher's (Susan Banks) classroom

because she wouldn't have known of the monitor's presence any other way. I say this based on the fact that all teachers had been given strict instructions to stay on task in their classrooms and to be involved in intense reading lessons based on the Reading 1st guidelines. I am aware of this because I gave the instructions on what the monitor would be looking for and asked Dr. Riley to re-emphasize the importance of this to the faculty. I also knew that Dr. Riley had taken the monitor to the white teacher's class because she did not have recess duty that day, which means she was in the room when Dr. Riley and the monitor came by. Having recess duty was not an excuse for not allowing me to meet the monitor, as Dr. Riley was well aware that Susan Banks or another white teacher could have taken my recess duty if she really wanted me to meet the monitor. Later that day, Dr. Riley came by my room and gave me a hollow thank you for preparing her, but I got no recognition whatsoever from the State for all of my hard work as a professional. In 2000-2001 I realized even better as to why it bothered me when she did not allow me to meet the monitor in 1998-1999. The year 2000-2001 marked the year for SACS, which is an intense accreditation process that takes place every four years. Dr. Riley had no problem making sure that Anita Hill and Lisa Davis were readily available to meet the SACS team when they arrived. She wanted to make sure they were spotlighted for leading the SACS process. I wanted to hear from Natson his opinion about what happened to me and whether I had a legitimate reason for feeling used. Natson legitimatised my feelings as valid concerns about the way Dr. Riley was treating me.

d. I also discussed with Natson my concern about being verbally reprimanded by Dr. Riley for doing something that I got clearance on before going over to the other school. I'm talking about my visit to my goddaughter's school. I was

told by my goddaughter's mother that the teacher, Tracey Vickery, a white teacher who is married to the son of Natson's secretary, Billie Vickery, wanted to touch base with me about the student. That was the only reason I got permission to go over there. I thought we had a very congenial and productive meeting, as we exchanged no harsh words, insults, or any other negative language that would indicate any hostility by either of us. So, that is why I was very confused and concerned when Dr. Riley told me that Mrs. Vickery's husband said he was going to file harassment charges against me. Natson told me that no such complaint had been filed against me, and he reassured me that there was no basis for anyone to file such a complaint. Natson seemed just as puzzled as I was as to why Dr. Riley would tell me something like that. Natson said he had not heard anything about any harassment charges.

e. I was also concerned about a student disciplinary matter and I discussed this with Natson during this first visit. Dr. Riley told me that a parent and the parent's mom were mad because of a mandatory Promotion/Retention form that I sent home. If a student is not meeting the criteria to be promoted at the end of each grading period, beginning with the third grading period, it is a mandatory process to send the promotion\retention form home with the areas that must be achieved checked. Although parents do not like to receive this type of information, educators would be held accountable if the form is not sent home. After conferencing with them, Dr. Riley told me not to keep the student in from recess when his butterfly is moved, in accordance with the Grade Level disciplinary plan, previously prepared by the grade-level teachers and approved by Dr. Riley. Dr. Riley's order went against our approved discipline plan established at the beginning of the year. Although I did not feel that this was fair to the rest of the students who had to abide by the

approved discipline plan, I did as instructed. Of course this student's behavior got worse instead of better because he knew that there would be no repercussions for his negative behavior. I related to Natson that a few weeks later the same student was spotted with a toy gun (but real looking) at recess that I never saw. If the student had it in the class, he kept it hidden from view. One of the white female students went home and told her mom about what she saw on the playground when I did not have duty and the mom called Dr. Riley. Dr. Riley called me into her office to tell me that I needed to do a better job of "eye balling" [the terminology used by Dr. Riley] my students. Dr. Riley was implying to me that I wasn't doing my job correctly and that I was somehow responsible for not catching this student with the toy gun. I reminded Dr. Riley, in as nice a way as possible, that under the current school district's policies without a reason, (Excerpt Board Policy JCAB), I was not to search students or purposely search their book bags. I told her further that if my Para-pro (paraprofessional teacher's assistant), a white female, and I didn't see it, then we couldn't do anything about it, and I reminded Dr. Riley that she was the one who told me not to discipline the student's inappropriate behavior. I felt I should have been able to use our approved grade-level disciplinary plan across the board and not show favoritism. I told Natson that I felt Dr. Riley was being unfair to me by criticizing me when other white teachers didn't see the gun either. In addition to this, the parent had voiced to me that she was always cautious in that she hoped that her son would not be singled out because he is bi-racial. Because this was mentioned to me, it is probable that the parents discussed this issue with Dr. Riley causing her to feel compelled to treat him differently in order to keep the white parent from making accusations that the student was being singled out.

f. I also complained about how Dr. Riley wanted me to present a summary report of the Reading First program at the faculty meeting last Wednesday. I did the report and got mounds of positive feedback from the faculty on my report. The very next day Dr. Riley tells me that Shirley Cobb will be responsible for Reading First next year because the principals were doing it at the other schools. It did bother me that nothing, and I mean nothing, came out of her mouth positive about the hard work that I did for her! Also, when I requested earlier to remain the Reading First Chairperson, why didn't she tell me at that point that Shirley Cobb would do it next year? Three (3) days difference couldn't have made that big of a deal. I had requested to be relieved as grade rep., but also requested to remain the Reading First Chairperson for the 1999-2000 school year. In other words, I wanted to remain one or the other. I discussed that if I had a choice I'd prefer another year as Reading 1st director for graduate school purposes, but I would serve in either of the two capacities. I knew that I'd have to complete a project based on my research of Cambridge College and felt that Reading 1st would be a great project. Dr. Riley granted me both requests without reservation. Although I would have loved having another year to fine tune my directing abilities, I told Natson that I didn't have a problem with the fact that Riley did not want me to Chair Reading First for the next year, as I was aware that principals were directing at their respective schools. However, I told Natson that I strongly felt that Riley used me as a tool to teach her and the faculty about Reading First, and that if the true reason for removing me was because the principals were supposed to be the project director, then Riley should have removed this responsibility from me the moment I told her that the other schools used their principals to chair the Reading First program instead of using a full-time classroom teacher like me, imposing on my teaching responsibilities all year long, then hanging me in

the end. I felt if I were a white teacher, Dr. Riley would have treated me better. Natson agreed that I had a legitimate complaint.

4. During this first meeting with Defendant Natson, I clearly stated to Natson that I felt I was being mistreated because I am black. I might not have said those specific words, but from the context of our conversation, he knew I was talking about mistreatment based on my race. If he did not understand my initial complaint, he would not have referred me to Donnie Simmons during an unplanned visit. Mr. Natson asked me how things were going. I told him that things were the same and no improvement had been noted. When Donnie Simmons's name came up, he told me it might not be a bad idea for me to talk to Donnie Simmons.

5. After I explained my concerns to Mr. Natson, he assured me that I had very legitimate concerns, and he further expressed that he wanted the three of us to meet in his office to discuss my concerns openly, but that meeting never took place. Although I know Natson testified during his deposition that the three of us, himself, Riley and myself, all sat in his office at the same time to discuss my grievances, this meeting never happened. Natson was supposed to arrange a meeting in May of 1999, but he never did. Instead, he changed his mind for some unknown reason, referred the matter back to Riley, and basically, just left me unprotected to be further unjustly criticized and harassed by an angry principal, who now knew I went to Natson about her, to find out if what she had told me in a conference earlier in the school about harassment charges being brought against me was accurate or not, and about other concerns about the way Riley was treating me. I did not want to jeopardize my career by challenging her, so I thought I would discretely and professionally discuss my concerns with Natson, a higher

authority who ought to know if such a complaint had been filed against me, and I thought he would find constructive ways of approaching Riley about my other concerns. These matters had been bothering me throughout the school year and I wanted to get things cleared up before the end of school and not have this cloud hanging over my head at the start of the 1999-2000 school year.

6. During our first meeting, I discovered from Natson that Dr. Riley had lied to me about harassment charges being filed against me. See Excerpt D 0152 "Visiting goddaughter's class" incorporated by reference as though fully set forth herein.

7. Chronologically, these are the events that took place that led me to believe Dr. Riley was intentionally creating a hostile and abusive work environment for me, especially after she learned about my complaints to Natson about her:

8. August, 1998(Prior to preplanning): Dr. Riley had some questions about instructional orders, meaning teaching materials that had been ordered prior to her arrival. Sylvia Tremble and I happened to be on the premises trying to get an early start for the upcoming school year. We were the only two teachers on campus. We were called in to answer her questions. Sylvia Tremble and I arrived at the office simultaneously. The questions were relevant to grades above kindergarten level. I assumed that to be the reason I was more responsive than Sylvia Tremble. During this time, all of Sylvia Tremble's experience had been in kindergarten. I explained why certain books had been ordered for certain grade levels as best I could, as I did not want to speak for grade levels outside of my own. After the questions had been answered to her satisfaction, she asked who was the grade

rep. for kindergarten. Sylvia Tremble responded that she was the grade rep. for kindergarten. Sylvia Tremble had been grade rep. for two or more consecutive years. She then wanted to know who the grade rep. was for first grade. I recall telling her that Susan Banks was as far as I knew. She said, "I'm appointing you as grade rep." Since she didn't ask me, I felt obligated to do what had been set before me. I was not offered a choice.

9. August, 1998 Week of Preplanning: Dr. Riley called a meeting with the people that attended the Reading First training in Atlanta. We were scheduled to meet in the media center (library). Janice Wilson (teacher), Sylvia Tremble (teacher), Shirley Cobb (assnt. Principal), Dr. Riley (principal), and myself all attended the meeting. Although we had concluded that we were the Reading 1st Committee from having gone to the training workshop in Atlanta, GA., Dr. Riley confirmed our conclusions during this meeting. The teachers arrived at the meeting first. Mrs. Shirley Cobb participated as if she was just a member of the committee. As Dr. Riley was facilitating the meeting, she would pass papers relevant to the program to me. I did not know why she was passing everything to me, and I tried to make sense out of it as mounds and mounds of papers were coming faster than I could figure it out. Suddenly I noticed that committee lists had been on the table all along. I glanced at the Reading First Committee and noticed that I was listed as the chairperson. Now everything was making sense to me. Mrs. Wilson and Mrs. Tremble asked me after the meeting if I knew that I was chairing this committee. Although I'd reviewed the committee list in my classroom prior to this meeting, I did not realize that I was listed as the chairperson until that moment. Dr. Riley made it clear that I would be responsible for the budget as well as implementing the guidelines of the program. I could only scan the forms being passed to me

because she conducted the meeting at a rapid pace. Besides, she was new and no one dared to interrupt her. Her instructions were being given in a way that we knew not to question authority. No one did. When the meeting ended, I had forms to complete, a budget to figure out, and a classroom to organize. From this point on, everything pertaining to Reading First was placed in my box, even if it was intended for Dr. Riley. For example during this same week of pre-planning week, I was told to pick up Focus materials in a memo that had been given to Dr. Riley. Before leaving Sallie Z., I went to each committee members' room for assistance, but they did not have time to help me, as they were trying to prepare for the first week of school as well. I had to go to another school building, used for storage at the time, to gather these books. When I arrived, I realized that I needed others to help, but going back to Sallie Z. was not an option and would have delayed me even more. In addition to this, the person that unlocked the room was only there for the purpose of unlocking the door and her time was limited. These books were to be used along with our Phonics program. I packed and delivered tones of books to the school as instructed. Upon returning to my school, I was able to get Avon Hendricks (school custodian) to assist me in getting the books to my room. Once the books were in my room I was responsible for separating them by grade level. I thought that I'd inform the teachers that the books were in my room and they could come and get them. I was exhausted at this point and still had my own room to organize. My saving grace was having a competent student teacher that was able to help me as I took care of the unforeseen duties put upon me during this critical week of pre-planning for my students. I can remember some teachers came to my room complaining that they did not want any more books in their classroom. Some took the books, but bluntly stated that they were not going to use them. Knowing how teachers

sometimes complain, I ignored it. This was the beginning of a journey that I'll never forget.

10. The lst County Office Reading 1st Meeting 1998-1999: Dr. Riley received a memo from the Board of Education. She placed it in my box as she did all information relating to Reading First. Since the memo stated that Dr. Riley or a representative. I went to Dr. Riley to make sure that I was supposed to go as the representative. She assured me that she wanted me to go. Upon arriving, I walked past the mailboxes, turned left at the entrance, and entered the Board Room. I sat on the left side of the table. I remember sitting across from Ms. Futch. Diane Bath conducted the meeting. I looked for familar teachers' faces. I did not see any. I looked at identification tags that we were required to wear and noticed that they all had titles of principal or assistant principal. I now knew that Dr. Riley did not realize that representative meant assistant principal in the context of the memo. Once I returned to school, I immediately informed her that administrators only attended this meeting. I told her immediately so that she could call Diane Bath to explain why she did not come. I did not want her to get in trouble for what she did not know. I asked her if she wanted me to continue directing the program. She insisted that I continue. I did. She's the boss!

11. Reading First Budget (1998-1999):I felt good about what I was doing even though this was my first time being responsible for a $25,000.00 budget. Although it would have been easier for the school accountant to monitor the budget, I didn't feel it was appropriate for me to tell her this. The budget was a learning experience for me as well as others involved. I was also in charge of mandatory meetings that we had to have in order to meet the Reading First guidelines. This was difficult because the white teachers had

a negative attitude about having to meet with me so regularly. I even had one teacher, Judy Mutter, to cry during one of my meetings because she felt that she had too much to do. I agreed, but I also had to do what had been put before me. I explained that I was only doing what had been asked of me. Getting everything going was no easy task, but because I had a student teacher at the time I was able to get a lot done. Mrs. Wilson (a second grade teacher at the time) and I spent an entire Saturday working on the initial parts of the budget based on Dr. Riley's instructions. Technically, the budget had to be done at the beginning of the year projecting what we expected to spend, then, at the end of the year showing what was actually spent. In the budget, I calculated that each committee member would receive a stipend of $150.00. The stipend was pre-approved by Dr. Riley. The only committee member that was not entitled to receive the stipend was Sylvia Tremble. The reason for this had something to do with the fact that she taught summer school. Subtracting her $150.00 means that $450.00 should have been allotted for in the budget. As this chronological time-line of events continue, my affidavit will demonstrate why I had to inform Mr. Natson that I never received my stipend.

12. Parent Workshop on Saxon Phonics (1998-1999): Part of the guidelines for Reading First is Parent Involvement. I feel that involving parents in their children's education is essential to the success of the program, and most importantly the child. I wanted to expose the parents to Saxon Phonics in a fun, yet informative way. My student teacher and I talked about conducting a workshop to train the parents on how the Phonics Program worked and how they could help their child at home. I also knew that this was a perfect opportunity for my student teacher to grow and shine. In addition to this, I could not direct the rest of the teachers until I gave it a trial run myself. My student teacher

(Angie Zimdhal) and I chose a lesson to teach to the parents. I bought refreshments for the parents. When the parents arrived, we had the best time displaying what we were doing with their children. Although we could not determine the outcome of what we planned to do, we invited a local news reporter to do a news report on the workshop. It was a great success, as our event was used repeatedly in other school related events that were televised. Although I felt good about the workshop, my feelings turned sour when Dr. Riley ordered the rest of the school to conduct a similar workshop. Although never told, it was obvious that the white teachers had a problem with having to stay after school to conduct a workshop. The whole idea was for me to report the outcome of my workshop to the teachers at the next Reading First Meeting so that they would know how to do it if they chose to at a later date. Before I could tell them, Dr. Riley made them do it.

13. Reading First Monitor Visit Nov. 20,1998: Prior to the monitor's visit, I was informed that the monitor would be in our area within the next few weeks. Not knowing if Dr. Riley knew this, I told her what I'd heard. I informed all the teachers so that they would not be caught off guard if the monitor were to show up without warning. The whole point was for the monitor to evaluate Reading taking place in our school based on the guidelines. A few weeks passed and I had not heard anything else in reference to the monitor's visit. When checking my box, I had a Memo from the Board of Education for Dr. Riley indicating when the monitor would be at our school. Dr. Riley attached a statement for me to have her ready for the monitor's visit. Knowing that I'd informed her in ample time of the forthcoming visit, she had plenty of time to check with the Board of Education to see if their was any validity to what I'd heard, then she could have prepared herself ahead of time

for the monitor's visit. I was very excited, none-the-less, because someone would finally see all the hard work going on at Sallie Z. I created a notebook that had test scores from the Basic Literacy Test, meeting hours obtained thus far, samples of how we were utilizing the three hours of reading instruction, as well as other items that I deemed important. The day before the monitor's visit, I reviewed the contents of the notebook with Dr. Riley. Although I did all of this, it never dawned on me that Dr. Riley had no intentions of making sure that I had a chance to meet the monitor. I did my best to look professional at all times, but on the day of the monitor's visit, I made sure to represent well appearance wise. To my surprise, Dr. Riley came to my door upon the completion of my recess duty to inform me that she came by with the monitor, but I was out to recess. It was hurtful because she grinned about it. She even thanked me for preparing her. The teacher next door (Susan Banks) commented, "You got all dressed up and did not get to meet the monitor". This was hurtful, as this was her way of saying that she got to meet the monitor. Susan Banks was also the teacher that commented, "Dr. Riley needs to know who does things around here before she starts assigning duties." Mrs. Banks would have known that the monitor was on our hall is by Dr. Riley taking the monitor to her room because Dr. Riley had given everyone strict instructions to be on task with reading on the day of the monitor's visit. Susan Banks is the same teacher that I indicated to Dr. Riley as being the grade rep. when she appointed me during the week of pre-planning. Refer back to number 8 of this affidavit if needed.

14. Visiting goddaughter's class (1998-1999): Elizabeth Sanders, a friend of mine, called me one night frustrated because her daughter was struggling in her present teachers class. I encouraged her to give O more time to adjust. As time passed, her daughter's progress was minimal

and O's mother was in search of answers. I had previously been her daughter's first grade teacher when she attended Sallie Z. Elizabeth and I became close friends when we found ourselves sharing common interests outside the school setting. Before we realized it, we were having early morning yard sales together as well as going on vacations to places such as Myrtle Beach. I decided that O was going to be my goddaughter. Elizabeth Sanders, my former student's mother, said she and Vickery thought it would be good for the child if the two teachers could confer and share information and that Vickery wanted me to come to Mattie Lively to meet with her. I was very happy to do anything that I could to help O, and would have done the same for any of my former students. O's mother felt a conference with her daughter's then current teacher (Tracy Vickery) would help bridge the gap on the student's learning problems. Before I could go, I knew that I'd need permission from Dr. Riley. I went to Dr. Riley and gave her the background on O. I explained that the present teacher and the student's mother thought talking with me would help close the gap on O's academic problems. I explained to Riley that I was this student's former teacher; therefore, my concerns were not in vain. Dr. Riley asked me if my class was covered. I told her that they'd just gone to activity class and I'd be back before activity class ended. Riley told me she thought that it was very professional for an educator to show that much concern for a student's well being. In fact, Riley encouraged me to go. I went. As I was signing in to visit Mrs. Vickery, I recognized O's mother's voice in a private conference with Dr. Goodwin. Since I knew that Vickery was expecting me, I signed in and went on to Vickery's class. Mrs. Vickery signaled for me to come to the back of the class where she was sitting working on papers of some kind. I sat in a student desk located directly beside her para-pros desk. Her para-pro was grading papers at her desk. The students were watching a movie. Mrs. Vickery

jumped right in and started to share her thoughts about O's academic problems. I felt that Mrs. Elizabeth Sanders would be joining us when she completed her conference with Dr. Goodwin, but she never made it before I left. Mrs. Vickery and I had a nice informative and short conversation. I didn't have much time and when Dr. Goodwin came to the door motioning me to him, I was about ready to leave anyway. Upon reaching the door, Dr. Goodwin said something that I couldn't understand, but it did not seem important, as he was busy moving something. At no time did Dr. Goodwin stop and admonish me for being at Mattie Lively. Goodwin and I walked in the same direction, he went toward the office and I left campus and returned to Sallie Z. I did not see O's mother while I was in the school building, but as I was getting in my car I spoke to her and told her that I'd call her later. The next day Dr. Riley called me in to tell me that my goddaughter's teacher didn't like that I'd come over during school hours to check on a student and that her husband was going to file harassment charges against me. Dr. Riley gave me a stern look and stated that I'd gone without permission. I reminded her that she'd given me permission to go. She stated, "You did not sign out." She was right. I left in such a hurry in order to make it back on time that I did not sign out. She made this statement to me as if she was telling me to "forget" that she'd given me permission. I thought, if I did not sign out, Dr. Riley could argue that I went without permission to no end and be believed by higher authority. I couldn't understand this because I explicitly expressed to Riley that I would be going over to Mattie Lively Elementary School. I believe, based on my conversations with Mrs. Sanders, Tracy Vickery was embarrassed that Sanders wanted her daughter removed from her class after not receiving the support that she felt her daughter deserved. Sanders told me that both Goodwin and Vickery were resisting the removal of her child from Vickery's classroom,

and in the end, Sanders had to appeal to the Hardship Committee to have her daughter removed from Tracy Vickery's class. I don't see how my visit had anything to do with Tracy Vickery being upset. The type of conversation Vickery and I had I've had with many teachers over the years about former students we were trying to help. In fact, I was happy that Tracy Vickery was so willing to share her teaching strategies with me, as this is how we gather new ideas to try in our classrooms. That is part of being a good teacher and I have observed that teachers commonly do it in general. I feel that this incident is pivotal because it set the stage for "how" she perceived I should be treated.

15. Disciplinary Issue (1998-1999): During the week of pre-planning, each grade level composes a disciplinary plan. This has to be done prior to the students' arrival because it has to be approved by the principal. The discipline plan also has to be established prior to the students' arrival because, oftentimes, it has to be put into use during the first day of school. Most importantly, it has to be ready so that parents can know what your procedure is in order for them to discuss it with their child. Dr. Riley had approved the first grade discipline plan. Later, I had to utilize the discipline plan with one of my students. He had to miss recess because of his behavior. Weekly reports are given to parents concerning their child's behavior. Depending on the behavior problem, a daily report may be sent home with the student to be given to the parent. When report cards were sent home for the third grading period, a promotion/retention letter had to be included in this students report card. It is a mandatory procedure to send the promotion\retention letter home after the third grading period if the student has a certain number of deficiencies, mainly reading and math. This document does not mean that the student will be retained necessarily, but it cautions the parent that improvement needs to be made. If the students' grades

improve, this document does not have to be sent for the next grading period. The student to which I am referencing is bi-racial. His mother had discussed with me her fear that her son would be singled out as a bi-racial student as he progressed through school. I assured her that she did not have to ever worry about that in my class my class. My focus was to be fair and consistent with all students. After receiving a promotion\retention letter, the parents (mother and grandmother) came in to confer with Dr. Riley. Somehow, the discussion turned to a behavior issue because Dr. Riley called me into her office to tell me not to use the approved discipline plan for 'this' student. Dr. Riley told me not to keep the student in from recess when his butterfly is removed. Although not stated, I wondered if the parent had discussed her fear that her child was going to be singled out to Dr. Riley. That, to me, would explain Dr. Riley's issue of differential treatment for this student. I thought, if Dr. Riley bought into the idea that the parents feared the child was possibly being singled out, then she had some insecurities of her own when it came to race. At this point we mainly kept the students inside because there were no benches for the students to sit on during time-out and we did not want the students sitting on the ground in dirt, as this would concern parents as well. Once benches were placed on the playground (near the end of the 1998-1999 school year), we felt more comfortable letting student have time-out outside. Dr. Riley's order went against our approved discipline plan established at the beginning of the year. Of course his behavior got worse instead of better because he knew there would be no repercussions for his negative behavior. A few weeks later the same student was spotted with a toy, but real looking, gun at recess. The student that spotted the gun went home and told her mom. Her mom told Dr. Riley. Dr. Riley called me into the office to tell me, 'I needed to do a better job of eye-balling my students.' I reminded her in as nice a

way as possible that I am not to search students or purposely search their book bags. I told her, 'If Gene Herrington, my para-pro (helping teacher), and I didn't see it, we couldn't do anything about it.' Not to add that she told me not to follow the approved discipline plan for 'this' child. I suggested to her that she might want to talk to Gene Herrington who indeed had recess duty on this occasion. Dr. Riley had access to everyone's recess duty schedule. If the parent said it was spotted during recess, I mentally questioned why she did not begin her investigation with the teachers and para-pros that had recess duty on the date of the incident. I felt that I was being singled out at this point.

16. Budget (end of 1998-1999) school year: As stated previously in number 11 of this Document, the beginning budget calculated possible expenditures. Now it was time complete the final budget inclusive of what had "actually" been spent. In the Reading First guidelines, there was a number to call for any questions that the director might have in reference to the budget. I had to utilize this number a few times to make sure that I was doing it correctly or to ask how to do something. The principals did not know how to complete the budget, so calling the State Board of Education was the only resource that I had. However, to make this call, I had to us the phone in the office. In particular, the phone located in the bookkeeper's office on this occasion. On this particular occasion, the bookkeeper and school accountant noticed what I was doing and stated, " I should have been helping you with this from the beginning of the school year." Technically I agreed, but Dr. Riley's stern leadership style did not lend itself to suggestions, especially at the beginning of the year, so no one interfered. I began explaining to Sue Avra what I was doing. Together we were working on the budget, but I knew things to be included that she did not. I also knew that she had

experience in accounting and could assist me on how to simplify the process. We could help each other. Mrs. Sue Avra left out of her office for a few minutes while I was still working. My teacher planning time ended so I gathered my things and proceeded to walk out of Mrs. Avra's office, which is a part of the main office. When entering the main office, I walked up on Mrs. Avra whispering to Dr. Riley. It was a whisper quiet enough not to be heard had I been in Mrs. Avra's office, yet loud enough to tell what was being said if one was in the main office. Dr. Riley was facing me when Mrs. Avra was whispering to her. I walked up to the back of Mrs. Avra; therefore, she had no idea I was around. Dr. Riley did, but she had no way to tell Mrs. Avra that I was behind her. She was telling Dr. Riley that she should have been doing the budget and Dr. Riley commented, "Well you should have told me." I commented to Mrs. Avra that I left the budget on her desk in case she wanted to work on it some more. I felt betrayed because she did not have to go behind my back to make me appear incapable of completing the budget. I would have been more than happy to approach Dr. Riley with Mrs. Avra and suggest that we complete the budget together or if necessary agree to let Mrs. Avra complete what she should have been doing all along. I never expected to feel belittled. Feeling betrayed, I went back to my classroom. Although I felt that the budget was going to be finalized by Mrs. Avra, it was my duty to follow-up to see if I needed to do anything else. Upon going to Mrs. Avra, she informed me that she ould complete it. She never referred back to me for input.

17. At May 1999 (Request for duty assignment): Knowing that the year was coming to an end and duty assignments were being considered for the next school year (1999-2000), I requested in writing to remain grade rep. or Reading First Director. One might ask why would I want to

direct Reading First for a second year. I had been accepted in the Master's Program at Cambridge College. I was aware that I would have to complete a project as a part of the graduation requirements and felt that Reading First would have been an excellent choice. Even serving on the Reading First Committee outside of the directing capacity probably would have been beneficial to complete the project. Dr. Riley was aware that I applied to Cambridge because I asked her, along with Mrs. Cobb, and former principal Dr. Raith to recommend me. They all did. Dr. Riley never responded to my written request. I later returned to her for a verbal response. Dr. Riley assured me that I would serve in one of the two capacities without hesitation. Although implementing the program was a definite challenge, I decided that Reading First could only get easier for the next school year. I was satisfied with her decision.

18. May 1999 End of Year School improvement Reports: Dr. Riley had the chair from each committee to give a summary report about their respective committee at the faculty meeting. The purpose of my report is to allow the faculty to see how much growth occurred. In order for the growth to be measured, several steps had to take place. The growth would be measured based on the BLT meaning Basic Literacy Test. This is the testing measure used to assess growth under the Reading First Program. The students were tested during the beginning, middle, and end of the school year. This test required me to be out of the classroom for purposes of instructing the teachers on how to administer the test. I did not always have all the answers because I was learning myself. I had to gather an average for each testing period. Each grade level (k-2) had to have it's own average. I was responsible for approximately 15 teachers. After gathering an average for the beginning, middle, and end of the year, I had to chart the amount of growth from one

testing period to the next and then I had to show overall growth for each grade level. While giving the report, I thanked the teachers for color-coding the BLT score-sheets for better visibility and because the instructions required the score sheets to be color-coded. Some teachers had neglected to do this part and I had to return score sheets to them to be re-done. I also thanked them for bearing with me, as I had to learn along the way. The teachers were pleased with the amount of growth that had taken place. Upon completing my report, Dr. Riley stood up and coldly went on to the next report without providing any feedback. The next person that reported for their committee received feedback. The very next day following this very tedious report, Dr. Riley calls me into the main office to tell me that Shirley Cobb will be responsible for Reading 1st the next year because the 'principals' were doing it at the other schools. Her demeanor was scary. She did not have enough respect to take me into her personal office to tell me this. The entire time she was talking, she paced the floor. She did not structure this to sound decent or to encourage an open discussion. She did not say anything positive about my year as project director. She said, 'You need to be in your classroom!' Why did she wait until the end of the year to decide that I needed to be in my room? Any time I was out of the room, it was at Dr. Riley's request and always pertaining to Reading First. I was confused because I'd previously told her that the principals were coordinating the program at their schools. Why did she change her mind so quick? Also, when I requested to remain Reading 1st director, why didn't she tell me then that Mrs. Cobb would take over as coordinator for the 1999-2000 school year. What bothered me most was that she wanted me to turn everything over to Mrs. Shirley Cobb immediately as if I'd done something wrong. Although she made me feel worthless, I received a great deal of positive praise from other faculty members on my summary report and my overall

performance. Nevertheless, I began to feel 'used'. As stated in number 17 above, I had previously conferred with Dr. Riley to assure myself the grade representative position or the Reading First Director position at the end of the 1998-99 school year. Something turned her completely off from me and I could not figure out what it was.

19. Reading First Training Worshop @ April or May (1998-1999): Dr. Riley and I had been put on the school calendar to attend a worshop together in Savannah, GA. One week before the workshop, she informs me that I do not have to go. She never stated why. If she did not want to go with me, that was fine, but I often wondered why she waited a week before this scheduled trip to tell me that I did not have to attend. At the beginning of the 1999-2000 school year, it all made since. This topic will be continue in the appropriate place of this time-line.

20. ITBS Test Results (1998-1999): A faculty meeting was called to share the results of the State test scores. ITBS stands for IOWA TEST of BASIC SKILLS. The purpose of this test is to measure growth. It is used in conjunction with the teacher's evaluation of the student to determine whether the student is prepared to go on to the next grade. This test alone does not determine whether a child is promoted or not, as some students do not test well. This meeting was held in the music classroom. Dr. Riley transferred the scores to her own liking to show how one teacher's scores sized up to the other's in her grade level. This was the first time our scores had been shared in this manner. However, I realized within moments the possible reason why she'd treated me so harshly the day after the School Improvement Report. Upon review, I noticed that my test results were lower that anyone else's in first grade. I was being penalized for having lower test scores than the rest of

the First grade teachers, which may or may not attribute to my duty of project directing. The fact is that I was made to continue a principal's duty after bringing it to her attention that the principals were the Reading First Program Director's in their respective schools. In addition to this, Dr. Riley's image of me had been smeared by Eugene Natson's lack of initiative to investigate the harassment issue, which never happened. I questioned, If she did not dismiss me because of test scores, she used the test results to cover for the real reason, which was to put me back in my place now that she assumed that I was bad news due to the alleged harassment incident. Later, in this time line of events I am able to decrease test scores as the sole reason for her actions.

21. Reading First Budget:End of Year(1998-1999): The budget has supposedly been completed by this point. I continued to check my monthly payroll check and their was no sign of a stipend. I wondered if Mrs. Avra included it in the budget, as I have no way of knowing since I did not see the final copy. This is also one of the issues discussed with Natson. He informed me that he would research to find out what happened with the stipend. The summer goes by and no stipend is added to my check. In order to keep the pattern of what happened with the budget, I am going to include what took place in 1999-2000 in this section for clarity. When the 1999-2000 school year began, I saw Mr. Natson at the Board of Edcation. I asked him if he'd found out about the stipend that I never received. He walked me over to speak with Troy Brown. Troy Brown browses his computer files, can't find what he's looking for, and tells me that he needs to talk to Diane Bath. Early into the 1999-2000 school year but a couple of months after speaking to Mr. Natson, Dr. Riley intercoms for me to come to her office. Giving me a mysterious look, she states that Diane Bath wants to see me at the Board of Education. At the time, I could not think what

she could possibly want with me. When I arrived, I realized that I did not know where her office was located. Someone, directed me upstairs. Once there, I had to wait for about 30 minutes before she was ready because she was in another conference. When she came out and took a seat, she asked me to explain why I felt money was owed to me. I explained that it wasn't just owed to me, but to everyone on the committee during the 1998-1999 school year. I told her that I was probably the only one concerned about it due to having worked on the budget. She had me to explain how I completed the budget. I explained to her that I never got to see what was turned in to them because Mrs. Avra finalized the budget. Mrs. Bath stated, "Now everything is making sense to me." She said that she was wondering why our school had money left over that had to be returned to the state. Usually a school would us all the funding and she couldn't understand why we didn't. I told her that I had applied every penny, but I did not know what changes were made to cause this problem. Mrs. Bath had never talked to me on a personal basis prior to this visit. She stated that she was glad we had a chance to talk and that I would receive my money in my next check. I did. Upon returning to school, Dr. Riley kept looking at me as if I was supposed to tell her something. Since I did not know if I was supposed to say anything to her, I didn't. After all, I felt that if Diane Bath wanted Dr. Riley to know, she would have told her when she called for me to come over to confer with her. For several days Dr. Riley acted strange toward me. I do not know if Mrs. Bath ever told Dr. Riley the nature of our conversation, but I did discover that I had a better handle on the budget that they thought.

22. At End of May (1998-1999): I went to discuss my concerns with Mr. Natson, Superintendent of Personnel. I discussed all of my concerns with him, as

outlined above. It was stated to me by Natson that he had 'similar' concerns about Dr. Riley and that I'd done a very good job of expressing her areas of weakness. He thought that we could come together to help her. Natson specifically told me he didn't have any knowledge of anyone wanting to file harassment charges against me. He appeared to be puzzled as to why she told me this. He said he wanted the three of us to come to his office to discuss my issues of concern. Later when I called him to see where we would be meeting, he informed me that Dr. Riley wanted to talk to me on her own. I felt scared and alone. I was scared because I now knew that Mr. Natson had spoken with her about my very legitimate concerns. I don't know why he agreed to this new arrangement, I felt very uncomfortable about meeting with Dr. Riley alone. On the day of our meeting, I told her my concerns and she told me 'I can be warm and friendly with my family at home. I don't have be warm and friendly with you at school.' I knew that our conversation was at a dead end before it even got started. She was not receptive to an open-ended conversation at all. I couldn't understand why Natson set me up like this? I was now her target.

23. Summary of 1998-1999 school year: I didn't have a problem with the decision not to let me chair Reading 1st the next year. I firmly believe that teachers should have equal opportunity. I have a problem with the 'way' that she went about things. I gave her every opportunity to relieve me from this responsibility early on in the school year, but she obviously needed me to get her through this year. Dr. Riley insisted that I continue. I now know that I've been used to get her through her 1st year as a new principal. It was a year of learning and growing for me. I feel disrespected in many ways. I worked so hard that the State Department of Education got us confused and started to send information to Sallie Z. labeled 'Dr. Brenda Tremble' instead of 'Dr. Brenda

Riley'. I turned all Reading 1st materials over to Mrs. Cobb (assistant principal) so I do not have any proof of such signed envelopes.

24. Pre-planning-New School Year (1999-2000): I always try to start every new school year with on a positive note. Dr. Riley says that each new year is a new beginning, however, my positive note was short lived when she stormed into my room to very rudely tell me, 'You understand that we are sharing the para-pros!' Those are the paraprofessionals that assist the teachers. I was embarrassed because she said it so cold and ruthless. She didn't say hello, how was your summer, or anything positive. I very calmly said, 'Yes, they just showed up at my door and we were heading over to Mrs. Banks' class to decide how we would utilize them.' The two para-pros were Wilma Jenkins and Cathy Deal. The way that she talked to me would immediately signal to the para-pros that they could treat me any kind of way. It happened. I could tell Riley had it out for me, because I didn't see her treating any of the white teachers that way, but I just decided to stay out of her way as much as possible. I also noticed she reneged on her word to let me be grade rep. for 1st grade. This would be a year in time-out. I began this school year [1999-2000] knowing that I would not be a part of Reading 1st, but for some reason she kept 'telling' me that Mrs. Cobb, the asst. principal, would be in charge of Reading 1st, as though she intentionally wanted to make me feel bad. In addition to this, she made Mrs. Star Anderson, a white teacher, grade rep. for 1st grade. Riley did not bother to tell me at the end of the 1998-99 school year that I would not be grade rep for the First Grade. Instead Defendant Riley rushed to my classroom at the beginning of the 1999-2000 school year to make sure that I knew that Starr Anderson was the grade representative.

25. Stacey Collier (1999-2000): During the week of pre-planning. I realized why Dr. Riley did not allow me to attend the scheduled workshop. On the first day back, she had Stacey Collier to present what she'd learned at a workshop. The meeting was held in the Media center. Mrs. Collier used an overhead projector to present. Mr. Don Garrick was sitting behind me talking to another employee. I heard him say the following: " I thought Mrs. Tremble was in charge of Reading First." Mrs. Collier stated that she attended this workshop at the end of the 1998-1999 school year, which is when Dr. Riley and I were supposed to go together. My conclusions were now complete. She did not want to take me and I can only attribute it to her smeared perception of me due to Eugene Natson's choice not to investigate the alleged harassment charges and because of my race.

26. Committees(1999-2000): Upon viewing the committee list for this year, I was able to rule out ITBS test scores as a reason for telling me to stay in my room at the end of the 1998-1999 school year, as I was listed on the Safety and and Social Studies committees. I was coming closer to concluding that her treatment of me was based on race, the fact that I'd gone to Mr. Natson, and her smeared perception of me due to the alleged harassment charges.

27. Student Volunteer (1999-2000):On one occasion I contacted a student volunteer, Tara Kirkland, and specifically asked her if she could help me during pre-planning before school started. Kirkland agreed to make a special trip for me. When Riley came to my room and ordered Kirkland to leave, Kirkland was in my room as an independent volunteer that came at my request not the school. Riley used her position as the principal to coerce Kirkland into leaving my room. Also, on this particular

occasion, Riley had no way of knowing that Kirkland was in my room during the week of pre-planning unless she walked by because there was no sign-in sheet for visitors at this point. I felt Riley just removed Kirkland to demonstrate to me once again that she could make my professional life a living hell. Also, I observed that Riley did not condone blacks working together in the classroom. After Riley removed Kirkland from my classroom about a week into the school year, Riley switched the para-pros around so that all the black teachers had white para-professionals. All white teachers however did not have black para-pros. For example, Susan Banks' para-pro was Ginny Burgin (white female). On this particular day when Riley walked by my room, she saw three black people in one room. Riley did not see three working individuals or she would have respected this fact and not removed my volunteer who was in the middle of sorting pages from textbooks. Tara Kirkland and my para-pro were both black. I believe Riley was motivated by race because Riley acted the opposite when she assigned a white volunteer to my class, Michelle Cawthorn-Chandler during the 2000-2001 school year. Riley never asked Chandler to leave my room to serve in another area. I felt Riley had a need to keep control of me and though Chandler would help her do this. Kirkland, my friend also, came on that one day to lend me a hand. Chandler was assigned to classroom for the entire school year. I felt Riley was acting in a malicious way toward me because I had complained to Natson about her.

28. Recognition of Master's Degree(1999-2000): The white teachers were recognized for receiving another degree in a faculty meeting. I was the only black teacher to have earned a Master Degree but Dr. Riley didn't congratulate me in the same manner as she did in the past with the white teachers. When Dr. Riley acknowledged the white teachers, she elaborated with such praise that the

teachers beamed with pride and were further congratulated by the rest of the faculty. I was very proud of my achievement and wanted it to be recognized in the manner I had observed Riley recognized the white teachers, it made those teachers feel good and I wanted the same. I felt compelled to ask Riley the best way that I could to acknowledge my achievement by suggesting to her to share my project with the faculty. Instead of acknowledging my achievement, Riley merely emphasized the project in the presence of faculty then made light of my project by returning it to my box, as opposed to following through by making it available in the resource room. I was the first black to receive an advanced degree under Riley's administration. Sydna Williams (white female) was very appropriately recognized when she obtained her Master's Degree by being told to stand before the faculty, yet Dr. Riley can't remember if I was there or not when recognizing me as indicated in her deposition. I was also the only black person that had complained to the Superintendent of Personnel, Eugene Natson. I felt Riley was again showing me that she knew how to put a black person in his or her place and that she didn't have to help me professionally in any way, and that she wasn't going to ever do anything that I might be able to remotely construe as favorable to me professionally or otherwise. I felt a deep sense of vindictiveness coming from her, even though Riley tried to mask it. During the time for me to graduate and update my certificate, I had to frequent the Board of Education to complete the proper paperwork. Although I was not going in to confer with Mr. Natson, if he saw me, he would ask me how things were going. I can't remember all of what was said, but I gave him an indicator that the environment had not changed. On this occasion, he was standing in the hall near the Board Room. I can remember him telling me that he could tell that Riley was not going to respect him as her black administrator. Somehow, Donnie Simmons name came up

and the conversation eluded to the fact that it might not be a bad idea to talk to him concerning Dr. Riley.

29. After Mrs. Deal's Surgery (1999-2000): As previously stated, Dr. Riley set the stage for how the para-pros acted toward me when she talked rudely to me in front of the new para-pros. When Mrs. Deal, a white female and the paraprofessional helping me in my classroom, returned from surgery (hysterectomy) she was very hormonal. On one occasion, she was crying in the library. Dr. Riley apparently walked up on her as this was taking place. She tells Dr. Riley that she doesn't know if she's doing her job right. Dr. Riley calls me in to question me. This was the first time I'd known that Cathy wasn't sure of her responsibilities. I knew that Cathy was new, but she was doing a good job as far as I was concerned. I had a notebook that clearly stated what she needed to do each day. I never tried to stress her out or anything. I knew that some things would come with time and experience. I told Dr. Riley if anyone should be crying it should be me because I have a picture on my desk of my husband and me and someone put 'devil' horns on my head. Later, Cathy admitted to doing this, but I still have reservations as to whether it was really a practical joke or not. When I told Cathy that I was called in by Dr. Riley, she appeared surprised. She said, 'I never told her that you had anything to do with me crying. I told her it was my hormones.' Cathy later got a patch to control this problem. By now I could tell that Dr. Riley would be jumping down my throat if she even thought I might be involved in something. I was beginning to feel like I had to walk on egg shells at school. I remember Mr. Natson calling the school for me to come to see him in reference to a comment that Dr. Riley made about this incident to him. When I got there we went into his office and began telling me that Dr. Riley told him that I was having problems with my para-pro. All of this

was new to me. I told him that I was fine with Mrs. Deal and had no problems. I explained what she did to my wedding picture and that I hoped that it was a practical joke. Again, he agreed with my perspective on things.

30. Student's eating habits(1999-2000): Mrs. Cathy Deal noticed that a student was eating sweets only for lunch. When she informed me, I thought I'd write a note to his mother. The mother asked me to keep her abreast of any changes with her son due to his ADHD and emotional factors affecting his life. The mother being under a lot of stress responded to my simple notes in lengthy form and Dr. Riley made a big deal out of it based on the fact that I mentioned that she monitors the lunchroom in my conversation with the parent. The mother had some concerns about the note, took the note to his doctor, and came to see Dr. Riley about the note. The parent didn't like the note, but she did start sending healthier lunches. The parent was also concerned about a comment that I had made in reference to his eating habits in the child's presence. I didn't notice that he was standing behind his mother. Dr. Riley called me into her office and stated to me, 'You should not have mentioned the child's eating habits in front of the child.' I didn't see it as a problem because what I had said was on a child's level, but I accepted Dr. Riley's admonition as constructive criticism and went on.

31. End of Year 1999-2000: I was called into the office. Both principals (Riley and Cobb) were seated. Dr. Riley explained that she would be moving me to second grade for the coming school year. This meant that I would now be on the hall with her. I hoped that things would get better. I was not told about significant events that were to take place with the Second Grade teachers. For example, I was not told about the meeting where the Second Grade

teachers actually discussed the upcoming students and decided on how to distribute them. As a result, I was given a larger share of the low achieving students with behavior problems than the other teachers. If I had been at the meeting, I could have made sure the distribution would have been more evenly divided, so no one teacher would be overly burdened with the kinds of problems that these children often present. It was obvious to me that they, or Riley, since Riley was part of that meeting, were trying to keep as many of the white children to themselves as possible and load my class with the low performing black students that they didn't want to be bothered with. I should have had some input in this meeting. I know I was not the only teacher moved to a different grade, but I was the only teacher who had complained to Natson about Riley, and I felt like this change could have been just a cover to hide Riley's true motivation, namely, to put me in a location where Riley could make me feel even more uncomfortable than before, because that is what happened in reality. Riley testified during her deposition that her reason for making this change was vertical alignment, as she explained it, where a teacher moved from one grade to next grade level can help the teachers in that new grade level to understand the previous grade level. However, when Riley informed me of the change, she never said anything to me about vertical alignment. I believe Riley's reasoning is flawed and a pretext, because vertical alignment would only benefit the one group of students taught by the teacher moved. The teachers moved would have no basis for insuring improvement of the instructional process, as they were getting accustomed to teaching a new grade. In fact, we the second grade teachers and the first grade teachers did not have any meetings to coordinate instruction vertically, and the experienced second grade teachers didn't consult me about the first grade. In other words, there was no benefit

that I could by the move. I was very busy trying to figure out what to do as a second grade teacher. There was no effort to coordinate any curriculum instruction vertically throughout the school that I could tell, no other faculty member ever came to me to discuss implementing such a new teaching strategy and received no literature from Dr. Riley indicating this new teaching strategy. Therefore, vertical alignment would have little if any effect. Riley did not explain how moving teachers up and down a grade level can coordinate curriculum nor did she detail how the move can improve the instructional process. Two teachers were moved from first grade. Susan Banks went down a level. I went up a level. If this were being done to improve instruction, the two teachers would have been given a choice as to whether they wanted to go up or down as comfort plays a major role in the instructional process. [Board Policy GBD/GBE/GBC 1] Also, Starr Anderson(white female) had taught first grade longer than any other teacher at Sallie Z. All of her experience had been in first grade. In fact, Anderson should have been moved because she's taught first grade since her teaching career began. She also had the highest test scores in first grade, which means she would have been a better candidate to move to 2nd grade to improve instruction if this was in fact the reason. I was the only black teacher included in testing data. The other two black teachers, Sylvia Tremble and Shantell McArthur, both taught kindergarten and did not have to administer end of year ITBS state test. Riley was aware that I was not happy with how she discriminated against me, supposedly based on what Riley felt was my classroom duties resulting in low test scores, as Riley wanted me to believe. I believe Riley needed to add another black so that my complaint would appear be a matter of opinion as opposed to facts, for example, moving Sylvia Tremble to first grade would help give Riley some backbone if made the same accusation again. According to Sylvia

Tremble, she has no foundation for knowing if she was being discriminated against or not because she does not understand nor does she feel that she's ever been discriminated against and moving the two white teachers was an adjustment that had to take place in order to get Sylvia Tremble in first grade for ITBS state testing purposes. Also, Dr. Riley never had a meeting with the parents where she explained anything about the implementation of this new so-called vertical alignment. This would have been of great interest to the parents to know in advance that their children's teachers were going to be changed around and who they thought would their child's teacher might not. There is a difference in a child having an experienced second grade teacher and having a new one. I really believe Dr. Riley moved me to Second Grade for the purpose of designating me as the EIP teacher, to enable Dr. Riley and the white teachers dump officially all of the low-achieving black students that they didn't want to be bothered with on me. I had not requested this EIP training that took pl.ace in December of 2000, and after attending this training, Dr. Riley started expecting me to coordinate everything with the EIP program like I did with the Reading First Project, except that all the teachers know that working with a class primarily consisting of low-achieving students mean a great deal of behavior problems and low test scores. That is why the second white teachers and Dr. Riley met without informing me of the meeting, so they could screen out the "undesirable" students and dump them into my class before I even knew I was going to be a second grade teacher. Besides it is commonly known in the teaching community that if a principal wants to get rid of a teacher all the principal has to do is make that teacher feel so unwanted and uncomfortable that the teacher would either leave or get fired. I think this is what Dr. Riley and Mr. Natson were trying to do to me.

32. New School Year 2000-2001: I have always taught the 1st grade, so I expected to do some adjusting as a new 2nd grade teacher. I really wanted to transfer to get away from Dr. Riley. I felt she was going to continue to hound me and make me appear incompetent. But I couldn't accept the one offer that Mr. Natson offered me because of my children. I felt that Riley was moving me to her hall for personal reasons, but I was going to be positive about the upcoming year.

33. Week of pre-planning(2000-2001): I noticed that I was listed to serve on only one committee, Arbor Day\ playground\grounds. I had a problem with this because Riley had told us at the end of the 1999-2000 school year that she wanted every teacher on the curriculum areas committees that taught reading and math or science, social studies, and health. Since I was in a new grade I needed to be on the curriculum areas committees to become more knowledgeable of 2nd grade content. Even the newest teacher, who was also not in the curriculum area, was put on a committee for which she could grow. I decided to be professional and ask Dr. Riley if I could be utilized on another committee in addition to Arbor Day. When I went to her room to ask her, she was working at her desk. She acted as if she did not want to take a moment to acknowledge me. She said emphatically, 'No, that's all I want you to do is plant a tree.' She never looked at me again. I walked out of her office, back to my room, and cried. As a black American that is completely aware of past history, mainly slavery, I felt that she was telling me that I belonged outside working in the fields picking cotton. I know I did sign up for two curriculum committees. All certificated teachers must stay current with what's going on with education. A school committee is one way this is done. If I did not sign up for committees, it would have been noticed on the graphing

paper at the end of the 1999-2000 school year when the principal(s) were viewing the teacher choices. I would have expected to be called to the office if I had forgotten, because the teachers were required to sign up by a certain date. If a teacher's name was not on the list, the usual practice was that the office would contact the teacher, assuming the teacher was absent or not available; usually this is done via intercom to sign up. As Riley stated in her affidavit teachers signed up for committees prior to the 2000-2001 school year, which means Riley would have had ample time to recognize that I had not signed up. I was never contacted and told that I had not signed up for any committees that year. I don't remember all of the specifics, but I do remember that I signed up because I never wanted to miss an opportunity to do something to help me to improve as a teacher. I went to the production room and signed up on graphing paper for committees as other teachers and para-pros did. The committees are then assigned based on what the teachers signed up for. I never signed up for the Arbor Day/Grounds/Playground committee. Based on the committee list, I was only assigned to Arbor Day/Grounds/Playground. Why would I put myself on that committee after learning I was going to be teaching a new grade level? I believe my choices were in the curriculum areas of reading and math, because Dr. Riley always told us to sign up in our curriculum areas and I did.

34. Aug. 2000: About two weeks into the school year, I went to Dr. Riley to discuss the lack of 'balance' in my classroom. Although I only had two white females due to students that never showed up, I was more concerned about 'academic' balance instead of racial balance at that time. She told me that my class was just as balanced as the other 2nd grade teachers. I guess she forgot that I knew most of these students from the previous year in 1st grade. She totally

disagreed with me. I guess she thought that I was the only one that noticed the imbalance, but the extension teacher, Mrs. Harrell, had noticed it as well. Harrell clearly stated to me, 'Your highs do not compare to their [the other 2nd grade teachers] highs'. She knows this because she teaches science, social studies, and health to all 2nd graders. I assured Dr. Riley that I would do my best regardless.
Although it wasn't mentioned, I couldn't understand why I had only two white girls, and I counted at least four to seven white females in the other 2nd grade classes.

35. Aug. 20,2000: Dr. Riley saw me on the breezeway as I was heading back to my class after dismissing my students for the day and told me that I was holding up the office from doing the attendance. My attendance had been in the tray like the other 2nd grade teachers, but no one collected mine. When I reached my door, it was still sitting in the tray. All had been picked up by school patrols except mine. I'm beginning to think the woman enjoys making me feel bad. The other 2nd grade teachers saw my attendance in the tray also. This happened fairly often throughout the school year. I felt like someone was doing this to me on purpose. I started to recheck myself so often that I was confusing myself.

36. Aug. 28, 2000: Riley wrote me a note concerning Accelerated Reader folders. She stated in her note that my students needed to have reading levels in their folders before going to the library. I had already completed this task a few moments before reading her note. Curious as to how she knew all of this, I checked with Mrs. Newland, the librarian, to see what I'd done wrong that required her to go to Dr. Riley. I reminded Mrs. Newland that she could come to me when I make a mistake because I'm new in 2nd grade. Mrs. Newland informed me that Dr. Riley was

standing there when one of my students happened to be checking out a book and Riley saw that no check was in the folder. I went to get clarification from Dr. Riley on the matter. Riley said to me, 'I have staff 'designated' to tell me things.' At that point, I told her, Mrs. Newland told me that you were 'standing' there when one of my students happened to be checking out a book and the folder was not marked with a reading level. Riley looked shocked and displeased that I knew she was not telling me the truth. What she didn't know was that the student that was sent back to the room without a library book couldn't read at any of the levels for AR and was struggling with writing information in his folder. If Dr. Riley would keep an open mind instead of jumping down my throat, we might be able to pull things together. Why did she need people to tell on others? The word 'designated' bothered me. It made me nervous. I felt like I was walking on eggshells every day. Feeling insecure about how Dr. Riley was responding to me, I went to see Donnie Simmons who was, at that time, president of the NAACP. We talked about my class profile, Dr. Riley, and other similar situations that he had encountered with the school sysyem. We were sitting in a small room with a lot of radio equipment. He told me that he would go and talk with Dr. Riley if I provide him with some documentation. I asked him what would he say to her. He said that he would remind her that slavery was over and that she needed to back off of me. He said, " In the meanwhile if you feel she is mistreating you, you need to get a tape recorder and record everything she says anytime you have to talk to her alone". I followed his instructions.

37. Sept. 5, 2000: One of my white female students moved. A few days later one of my black female students had to transfer to Langston Chapel because she moved into that school zone. That left me with one white and

two black females in my homeroom class. I now knew for sure that my class was not balanced racially, academically or by gender. I didn't have a problem with this, but I thought the white female needed a friend with whom she could relate or at the most be given a choice of friends to choose from. I knew that the white female's mother and grandmother felt that there was an ongoing personality conflict between one of the black students and the white female student, which began in kindergarten. Based on my observation, I felt that it was more of a difference in style as opposed to personality. Each person has a different personality from the next. If we based everything on personality conflicts, we would never get students placed in classes. The white female wanted to be like the black female academically. The black female was an honor roll student. The white female student had not yet acquired the ability to apply herself.

38. Dr. Riley had told me on Sept. 8th that she would be making some changes to resolve the racial imbalance in my classroom.1 Sept. 11-14, 2000: Sept. 11th came and there was no mention of changes. On Thursday Sept.14th the white female student made a threatening statement to a black male student at lunch (I did not witness this because I was eating lunch). The white female was defending a black female classmate in my class. The black male that she threatened was able to say the same thing to the extension teacher, Mrs. Harrell, and me . The extension teacher came to me and we concluded that it had to be written up. The principal followed through with discipline procedures, but I knew that Dr. Riley would use this as another opportunity to harass me.

39. Sept. 15, 2000: the white female's mother came to my room. The parent said, "I'll be back in thirty minutes. I wanted to talk to the parent about her daughter's

A.R. scores, but the parent rushed away and never came to my room. She appeared irate so I went to the office to find out what I should do if she comes back. Mrs. Cobb instructed me to send her to the office if she does not sign in. At 1:30 Dr. Riley called me in to discuss what the mother said. I was so intimidated by the way that she treated me in the past that I decided to record our conversation so that there would not be any questions later, but I have misplaced the tape. Riley did not have very much to say about the threatening statement made by the student; however, she proceeded to tell me that the mother had some concern about the student's A.R. log. Obviously, the student had been taking tests without thoroughly reading and had been reading out of her reading range which caused her to fail a couple of the A.R. tests. We discussed this issue. I told Riley, 'I was going to talk to the mother, but she didn't come back to the room. I'll erase any tests that she didn't do well on and start over again. I'll try to do a better job of checking her folder, reading range, and the computer to make sure that she can feel more successful at A.R.' I told her, 'It's hard to see everything that happens because they work independently in the mornings and I'm usually trying to help students that have trouble reading or can't read at all.' I also stated, 'Elise wants other students to read to her instead reading books to herself'. Riley agreed that I couldn't let Elise interfere with other students' reading time. Riley said to me, 'I want you to make sure Elise is happy.' I questioned what she meant by this. I said, 'I have a lot of students that need me and I will treat all of them fairly.' I said, 'I have always treated my students fairly even before you came here. This did not make me feel comfortable. I said, 'What if I can't make her happy by your definition or her mother's definition of happiness no matter what I do?' I said, 'Dr. Riley, what if something else comes up?' This was the 3rd time Elise's mother had to be notified f a discipline problem. Two occurred before the

other white female left and the 3rd took place after the student withdrew. The first time involved throwing a French fry in the lunchroom in which I notified the parents myself. No disciplinary form was filled out. Her mother responded with a note that basically elaborated on the fact that Elise was startled and the French fry just kind of flew out of her hand. She was also concerned that the people on lunch duty need to give specific information on discipline problems. This note was given to Dr. Riley on Sept. 15th to have on hand for her conference with Elise's mother in case the incident came up. It has not been returned to me as of yet. The 2nd incident involved Elise telling a student the following: 'Shut your tail up'. Her grandmother said, 'It was not in her vernacular of something that Elise would say.' Please note: three discipline problems took place when I was not around, two at lunch and once in transition. If I member correctly, the first two discipline problems occurred before the other white female withdrew. The last one definitely happened after the white female student withdrew. I had no control over any of the situations. What if her discipline gets worse? I was feeling a heavy load now. I felt that this student was going to be defended by her mother and grandmother no matter what she did. I didn't know exactly where Dr. Riley was coming from with all of this. It sounded as if she (Dr. Riley) was coercing me to break the policy. Since we were on the subject of my only white female student, I brought up another concern, which was the fact that some of her behaviors could have something to do with her not having a friend in the class. I had observed this student searching for a way to fit in all week. Riley said, 'Obviously she has friend because she got in trouble taking up for Rebecca'(black female). I said, 'that could be an indicator that she is so desperate for a friend that she'll do anything to have one. By this time I was crying. I couldn't understand where Riley wanted this conversation to go. I reminded her that she told

me on Sept.8th that she would be making some changes. She said to me, 'how can I make a change at this point in the year?' Riley tried to blame the imbalance on 2nd grade teachers. I told her, 'We all worked on dividing Mrs. Harrell's class according to race, gender, and academics and it was not our job to go back and look it over. Riley said, 'You've had parents to 'request' you before. You know how that is?' I said, 'yes, but I thought an administrator had to look all data over. Even with parent requests you have to draw the line.' I reminded her that we, 2nd grade teachers, are not administrators and that it's an administrator's job to review this information. I asked her, 'Has Elise's mom recognized that she is the only white female in my class?' Riley said, 'Yes, I believe she has.' Thinking that this was against policy and that another school had underwent a similar situation that was dealt with by the NAACP, I left Riley with this statement: 'I will not lie for you. If a board member or anyone else recognizes that my class has one white female, I will not be able to cover for you. I gathered my things, and went to see Mr. Natson. He listened to my story. He agreed with me that Elise couldn't be the only white female in my class and that Dr. Riley should have known better because of the incidents at the other school. I told him that I was scared. Natson assured me that everything would be okay, he told me to have a good weekend, and that Dr Riley was on her way over. When I walked out of his office, she was sitting on the couch; that is as close as we ever got to being in Natson's office at the same time.

40. Sept. 15, 2000: when I returned to school to gather my things, Mrs. Harrell knew that I was frustrated by all of this. She voluntarily provided the following information: 'The only student that we got together on to put in your class was Jamone Raymond' (a black repeater in 2nd

grade that they [the white teachers] obviously did not want in their class). If they, the 2nd grade teachers and Dr. Riley, got together on this particular student, then wouldn't it make sense to invite me to the meeting. Harrell also stated, 'we thought that he would benefit more by having a black teacher.' It started to sound like my whole class was a 'fixed' deal, which would explain why I had more lows, and more behavior problems, than the other 2nd grade teachers.

41. Sept. 22, 2000: I had to take a half day leave due to my son's illness. Mrs. Howard, the Substitute teacher, told me the following: 'Dr. Riley came into your room and searched inside your desk.' She said, 'I think she left out with your report cards.' Howard never mentioned that she had to help Dr. Riley in any way whatsoever. Dr. Riley had already seen them once. I knew that I had one very minor correction to make. Riley saw me that same day and never mentioned that she had gotten them. If she needed to see them again, why not wait until I returned to work and ask for them? Was she really looking for the report cards? I didn't think so. Could she be setting me up? This made me nervous. Later I discovered that Riley had e-mailed me on Sept.21st requesting to see my revised report cards. I e-mailed her back on the 25th. No response, but the message did not come back undeliverable so I knew she received it. On the 26th I responded to her original message via reply and received a response, but again she lied because the substitute clearly stated, 'Dr. Riley searched inside my desk.' Mrs. Howard didn't say that she helped Dr. Riley 'find' the report cards (E-mail). This was totally out of character for Riley to go into a teacher's desk. Normal procedure was for her to request something, we give it to her, and she returns it to our own personal mailbox that was located in the production room across from the office. She was aware that we didn't always get emails immediately. It was much easier for Riley to return something to the mailbox than it was for her to

walk all the way down the hall to my class. In addition to this Mrs. Howard does not know any more about my desk than Dr. Riley (is supposed to know). Dr. Riley alleged reason that she needed the report to get attendance information is not accurate, because we have special attendance records that are kept in the office, much more convenient than looking through my desk for report cards to check attendance. Also, academic achievement is on a separate form kept in the office.

42. Sept.23,2001 at 9:00 am: I called Mr. Natson on Saturday morning scared because I was thinking that because Riley didn't tell me that she went into my desk that she might be trying to set me up. I started to think she might plant drugs or something in my desk to get me fired. Natson assured me that Riley was under 'monitoring' and that I had nothing to worry about. If Natson discussed the desk issue with her, I was never told. From this point on Riley never spoke with me privately. The asst. principal was always included whenever she had to say something to me.

43. Sept. 17, 2000: I called Elise's mom around 9:00. The mother told me that she was preparing for a yard sale because she would eventually be moving. I asked her, 'Does that mean Elise might not be finishing out the year with me?' She said, '1 don't know for sure at this time.' She talked about the amount of miles Elise was traveling each day and how early she had to leave in the mornings. We discussed Elise's reading and resolved the confusion about A.R. She brought up the female student in my class that Elise had a personality conflict with. She talked a little about Elise's behavior and how the 3rd incident could have happened because of the physical and verbal abuse that Elise witnessed her dad doing to her mom. We ended our

conversation by going over my plan of action to help Elise with A.R. Our phone call ended on a good note.

44. Sept. 18, 2000: Dr. Riley met with the 2nd grade teachers . She said that she couldn't figure out any other way to do this except to move the student to Mrs. Bennett's class. Riley claimed that 'they' had been working on this all along, but couldn't find a way to fix the problem. Riley said, 'the change would take place after she talks with the mother.' She kept reiterating that 'she' would be the one to tell Elise's mother.

45. Sept. 19, 2000: Dr. Riley told me in the hallway that Elise's mom told her that they were not moving. She said, 'I don't know if her mom wants her moved. I'm waiting, to hear from her,' (at 8:40 a.m.).

46. Sept.19, 2000: Riley came to library during my BLT testing and said, 'I'm going to go ahead and make this move,' (at 9:00 a.m.) Riley didn't see the importance of having me there for this transition. This move left me without any white females. And it was my understanding of Board or state policy that any new white females that moved into the system could not be placed in my room because they'd be the only one? Is that helping the situation or is that revenge, is the question that I pondered?

47. Date not known, but can be retrieved: I was gathering and completing the records of a student that withdrew from school. The school secretary asked me to leave them [the paperwork] on her desk because she was going home. I told her I would. The records are yet to be found. What happened to them? I do not know, but they were out of my possession. I hope this doesn't go down in my file because I did what the school secretary told me to.

The only person that was still in the office was Dr. Riley. She usually confronts me about everything possible, but she never mentioned the missing file (very unusual).

48. Nov. 21, 2000: I needed to go to a Doctor's office for follow up on a previous visit. I could not find either principal to get 1:30 early pass pre-approved. The school secretary, Diane Long, told me to go on. I assumed that she had done this for other teachers and it would be okay since she seemed so sure of herself. She said, 'I will tell Dr. Riley where you are and that you will be returning to school.' I had previously told Dr. Riley that I had a problem with my arms swelling and the doctor was trying to figure out what was causing the problem. I also told her that this particular doctor is only in Statesboro on Fridays. Riley said, 'It will be okay since the visits are short. The visit was not lengthy at all. Upon returning, I checked my mailbox and found a note stating that I had to turn in an additional early pass since I didn't get the 1:30 preapproved (see note next page). I went into her office to inquire about it. She, of course, had Mrs. Cobb nearby. I went to my room, got an additional early pass, and set it on her desk. I said, 'thanks for asking about my health' and left out of the office. Later that night I called the school secretary to inform her that I had gotten in trouble about not getting the early pass pre-approved. She was surprised that Dr. Riley reacted this way. It was obvious that Mrs. Long had done this for other teachers before and it wasn't a problem. Dr. Riley had not notified the faculty of any special procedures other than what she put on the "Early Pass".

49. Nov. 2000: I had to stop by the Board of Education to fill out some paperwork. Mr. Natson asked me how my year was going and I shared the early pass incident

with him. When I told him how I responded, he said, 'Good, your statement sent out a strong message.'

50. A few weeks later, Anita Hill (2nd grade teacher white) comes to me and says that she had a similar situation with her early pass and Dr. Riley did not ask for an early pass so she voluntarily gave one to Dr. Riley. Of course she took it because the subliminal message was that I know you took one from Mrs. Tremble so you need to take one from me as well.

51. Nov. 2000:Kathy Deloach (white 4th grade teacher at the time) stopped me to ask if the balancing of my class was resolved. I said, 'yes, as best as they could resolve it. During a teacher leadership meeting, I was told that she came down hard on Dr. Riley about her class profile. Before the Christmas break, Dr. Riley announces that Kathy Deloach will be the new Quest teacher (gifted program) after the Christmas holidays because the county decided that every school needed their own Quest teacher. The big picture is that K. Deloach humiliates the principal in front of a group of people about a similar concern and gets what she wants. I try to respect her by talking with her privately and she an only help me by leaving me without any white females. After the Christmas break, K. Deloach moves into the Quest room located next door to me. I believe that K. Deloach used my situation to help her situation.

52. Feb.2, 2001: My son wanted to take his new about 1.5 pounds puppy for share time. His teacher had been asking me to let him bring her on share day. He brought her. When I walked my son over to his class, we discovered that Mrs. Page was not in. When asked, Mrs. Dixon (a regular substitute) said, 'He can still share his puppy. I don't mind.' I told her that someone could bring the puppy back to me as

soon as they are finished with her. I thanked her for letting him go a lead with this since we did not know that Mrs. Page would be out. On my way back to class, I saw Mrs. Cobb (asst. principal). Knowing that she is an animal lover, I said, 'I've got something for you to see in Devante' class. It has four legs and it had a bath last night so it should smell alight.' She laughed and said, 'I'm heading that way right now. About two hours later Mrs. Dixon brought the puppy back to me. I thanked he again. She told me that my son had a goodtime sharing and they enjoyed her. She went on to tell me that Mrs. Cobb had come over to pet the puppy and informed me that Mrs. Cobb was a good dog sitter. I told one of my co-workers that I was taking the puppy over to Mrs. Cobb's office and that I would meet her on the playground for recess duty. Mrs. Cobb willingly kept the puppy. When recess was over, I used my bathroom time to go back and pick the puppy up. Mrs. Cobb told me that I could leave her until lunchtime, which was only 30 minutes away, if I wanted to. I said, 'I don't want to keep you from doing your work. She said, 'It will be okay since she's in a carrier.' I told her I would take her home on my lunch break if it were okay with her. She said, 'okay'. On my way back to class Mrs. Harrell stopped me to tell me about some boys that had jumped on another boy at recess time. She suggested we write them up since the other boy was crying. I agreed. When Mrs. Cobb received the referrals, she said, 'I don't have enough room in time-out for them. Just make them miss three days of recess next week.' She stated, 'I cannot call the parents since neither one of you saw the fight' She also made a statement that implied that Dr. Riley would not be in a good mood once she sees all the referrals that she had in her hand. Ms. Harrell and I felt that we had to do what was done.

53. Feb. 5, 2001: I was absent due to Dr. Appt.

54. Feb.6, 2001: When I got to work, I was called over the intercom to come to Dr. Riley's office. She told me to have a seat She told me that she was waiting for Mrs. Cobb to come in. When Ms. Cobb entered, Dr. Riley sat down at her desk and said the following : 'I heard you had a dog at school when the teacher wasn't here and that the fighting took place while you were tending to your dog.' I very calmly said, 'yes, my son wanted to share his puppy and we didn't know Mrs. Page wasn't here until we arrived.' I went on to tell her that Mrs. Dixon told me that she did not mind letting him share since the puppy was at school. Dr. Riley said, 'You are not to bring a dog to school without asking me first.' Since I had gotten approval from Mrs. Shirley Cobb on my every move on Friday, why wasn't she supporting me? I went to second in charge since Dr. Riley was not at school on the 2nd of Feb. The parent handbook does not state that the parent has to check with the principal to bring a caged pet to school. The puppy only weighed about 1.5 pounds at the time. She was properly immunized and had a clean health record. Mrs. Cobb just sat there. She never even looked in my direction. I knew that I was a couple of minutes late for recess duty, but I couldn't understand what my puppy had to do with the referrals on the boys that had been fighting. She never asked me any objective question about Friday. I felt like a child instead of a thirty-six year old woman. Feeling sick and betrayed inside, I simply said, 'I'm sorry. My son just wanted to share his puppy for share day. I didn't know that Mrs. Page wasn't here.' Mrs. Cobb never even looked at me. I knew that I couldn't win if I mentioned that Mrs. Cobb approved my every move because then she would become my enemy. I had no way out. I refused to be insubordinate. When Dr. Riley dismissed us, Mrs. Cobb had a sigh of relief on her face. Upon returning to my class, I started to cry in front of my students, my son, a

2nd grade teacher, and a parent volunteer. My son wanted to know why I got in trouble for bringing his puppy to school on share day. He was hurting inside. Dr. Riley didn't know that my son was still in my classroom. The students were upset seeing me cry. I was sick. I buzzed the office for a substitute. The 2nd grade rep. came down the hall with Mrs. Cobb. I am unable to even look at her. My class is split between the two 2nd grade teachers and Mrs. Cobb along with the second grade teacher told me to go home. The parent that was in my room couldn't believe she treated me so harshly. The 2nd grade teachers said, 'you're a parent and you haven' done anything that any other parent would do for their own child. The parent volunteer said, 'I bring animals all the time and I never check with the principals.' The students in the other 2nd grade classes were upset as well because I taught them in 1st grade or had gotten to know them on the playground. We tried to make it look as if I was just sick as opposed to being upset; however, it turned out to be both.

55. Same Day: I left school torn apart and confused. I went to the county office to talk to anyone in sight. I'm crying and shaking. Again, I ended up talking to Mr. Natson for the third time concerning Dr. Riley. This time he suggested that I write her a letter because he's trying to get her to understand how she makes people feel. I don't see the need since she is obviously power hungry and very insensitive to me as a teacher and as a parent. I expected him to see how much I needed someone on my side. Why should I write a letter that could be used against me later, regardless of how careful I word it? I've been begging for help for two, almost three years and no one responded to my cry. All I seem to get is lip service. I honestly thought, since it was at 9:00 a.m. in the morning and I had to leave school because I couldn't take anymore of the torturing, that Natson would get

up, go over to Riley's office, and support me like a real superintendent. It seemed to me that Natson being black would help him to understand how I felt, but Natson never took any action or told me about any other steps I could take to get Dr. Riley to stop treating me unfairly.

56. Shirley Cobb (asst. Principal) was the one person I trusted since she'd known me longer than Dr. Riley. This county knows that I am an honest educator that would do no one any harm. I supported Dr. Riley when others were skeptical. I made her look good as a first year principal and she doesn't find me useful for anything, but planting trees and dumping trivial problems in my lap. Now that I can no longer trust either one of my superiors and I can't rely on the superintendent, I did not know what to do.

57. Still Feb. 6, 2000:I begin to have chest pains. When I arrived at the Cardiologist they are able to see me. After leaving the Doctor's office, I went home to rest. Before going back to the doctor's office for further testing, I got my nerves together to go and pick up my son. Mrs. Harrell came down the hall to Mrs. Bennett's class where I was. Harrell reassured me of two things. She told me that I 'was' out to duty when the fight took place and that I was tending to the student that had thrown the rock when the other student came up to her crying about some boys fighting him. Harrell said, 'I'll go and tell Dr. Riley the facts if you think it will help.' She did. Harrell also told me on my voice mail at home she did not say anything to Mrs. Cobb or Dr. Riley about the dog because she didn't see where I'd done anything wrong. I couldn't understand why Dr. Riley was so abrupt with me, especially not allowing me a chance to speak. The 2nd grade teachers told me that they would do anything I wanted them to do. I felt that they were tired of seeing me unjustly criticized. Being the only black teacher on my hall, I didn't

know if others were noticing how harsh I was being treated. It was no secret now, they knew. Natson had promised me that nothing would happen to me, and now this.

58. Feb. 7th-9th 2001: No apologies, No Hello, No nothing! I thought Dr. Riley would realize her mistake after talking to Mrs. Harrell and at least say I didn't mean to ruin your day. Why did the Asst. Principal let me get dumped on like this?

59. On Feb. 7th, the principals were walking down the breezeway. I had to step to the side to keep them from hitting me. I was scared and sick. They did not speak nor have they called me personally to ask how I'm doing to date. When I take my son to school, I don't get out of the car, but they've never come over to the car to see how I'm doing. My doctor thinks it is better if I stay away from the premises in order for me to heal. I now understand that it was the series of events that brought me to this point. The final incident was just the icing on the cake.

60. Janice Wilson (1st grade teacher white) informed me on Feb.7th at 2:30 p.m. that she brought two puppies to school that spent the entire day in the production room that is directly across from the office. It's okay for her to share her puppies and leave them all day, but I'm unjustly criticized for a puppy that stayed for a couple of hours. To illustrate the difference in how Dr. Riley treated white teachers and me, I was out of my room tending to Reading First when my student teacher was teaching, and Herrington, the white parapro made it a point to complain to Dr. Riley, and I sensed that Herrington was going behind my back because of the way Dr. Riley would come around my classroom looking at me in a suspicious manner. On the other hand, Wilson was in the production room (teachers run

copies, check mail boxes, have meetings, etc. in this room) tending to her two puppies when her student teacher was teaching.

61. Feb.12th at 9:30: my husband called Dr. Batten (school Superintendent) to discuss his concerns about my situation. He discovered that Dr. Batten had not been informed about any of the incidents that had taken place. Batten told my husband that he would be getting back in touch with him. No call from Dr. Batten to date.

62. Mrs. Klutz (3rd grade teacher white) came through my room when the incident happened and expressed that she brings animals regularly and she never asks either principal.

63. 2nd Visit to Donnie Simmons (Feb. 12, 2001): Sick and confused I went to Mr. Simmons house with hopes that he could help me. At this point he was no longer the president of the NAACP. He gave up the presidency shortly after he became a Board member at the Board of Education. His wife came to the door. She said that her husband was still in bed. I asked her if she remembered me from the previous visit. She said that she did. I gave her a typed document explaining what happened to me. She assured me that she would give it to her husband. After not hearing from him, I called Mr. Simmons at home. He said that he would be following up with Mr. Natson and Dr. Batten. I never heard from him.

64. At one point Mr. Natson told me about a possible position at Stilson, however, because of the distance and child care arrangements, it would have been very difficult for my family and me if I had taken that transfer. Natson did not tell me about any other specific transfers that I

could check into that were nearer my home or less inconvenient than Stilson.

65. During the time that I worked under Dr. Riley, I never observed her being disrespectful to the white teachers, whether male or female. I observed white teachers agree with Dr. Riley and complained about, but Dr. Riley did not remove them from leadership roles. There were white teachers who had low ITBS scores and they were not told to stay in their classroom. I didn't deserve the type of treatment I got from Dr. Riley. Before Dr. Riley, I had been very successful as a teacher and was making good progress toward an outstanding career. It seems that I was okay for Dr. Riley to used to do her principal's duties, but not good enough to be an equal among the faculty, she always did something to me to drive that message home. I became very scared because I saw my career slipping away and I couldn't get any help from Mr. Natson to stop. I have been devastated emotionally, spiritually, and financially by Dr. Riley, Mr. Natson, and Dr. Batten, all because I exercised my constitutional right to complain about being treated unfairly.

I declare under penalty of perjury that the foregoing is true and correct. I understand this Affidavit will be submitted as evidence in support of Plaintiff's Response to Defendants' Motion for Summary Judgment in the above-styled action. If called to testify, the above will be my testimony on this matter "

EXECUTED on August 4, 2003.

s/Brenda E. Tremble, Affiant

SWORN TO AND SUBSCRIBED
before me, this 4th day of August, 2003.

s/Angela D. Worrell
NOTARY PUBLIC
My Commission Expires: October 13, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff,

v. Civil Action No. 6:01-CV-134

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, Individually and in His Official Capacity as Superintendent of the Bulloch County School District; EUGENE NATSON, JR., Individually and in His Official Capacity as Assistant Superintendent for Personnel of the Bulloch County School District; SHIRLEY COBB, Individually and in Her Official Capacity as Assistant Principal of Sallie Zetterower Elementary School; and BRENDA SHUMAN-RILEY, Individually and in Her Official Capacity as Former Principal of Sallie Zetterower Elementary School,
Defendants.

AFFIDAVIT OF EUGENE NATSON, JR.

PERSONALLY APPEARED before the undersigned attesting officer, duly authorized by law to administer oaths, EUGENE NATSON, JR., who having been duly sworn, deposes and says:

My name is Eugene Natson, Jr. I am over the age of twenty-one (21) and competent to provide this testimony. This Affidavit is based on my personal knowledge of the facts contained below.

Plaintiff came to me on several occasions between 1998 and 2001. During these meetings, Plaintiff complained about a number of perceived problems she had with Dr. Riley. At no time did Plaintiff ever tell me that she thought Dr. Riley was taking any of these actions because of Plaintiff's race. The first time I ever became aware that Plaintiff was contending Dr. Riley's actions were race-based was when Plaintiff filed her EEOC Complaint.

The Chair of the Reading First Program and Grade Representative do not receive additional pay or benefits. Elementary school teachers do not receive additional pay or benefits for serving on school committees.

I understand this Affidavit will be submitted as evidence in support of Defendants' Motion for Summary Judgment in the above-styled action. If called to testify, the above will be my testimony on this matter.

s/Eugene Natson, Jr.

Sworn to and subscribed before me,

This 30th day of June, 2003

s/_____
NOTARY PUBLIC
My Commissions expires _____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff,

v. Civil Action No. 6:01-CV-134

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, Individually and in His Official Capacity as Superintendent of the Bulloch County School District; EUGENE NATSON, JR., Individually and in His Official Capacity as Assistant Superintendent for Personnel of the Bulloch County School District; SHIRLEY COBB, Individually and in Her Official Capacity as Assistant Principal of Sallie Zetterower Elementary School; and BRENDA SHUMAN-RILEY, Individually and in Her Official Capacity as Former Principal of Sallie Zetterower Elementary School,

Defendants.

AFFIDAVIT OF BRENDA SHUMAN-RILEY

Personally appeared before the undersigned attesting officer, duly authorized by law to administer oaths, BRENDA SHUMAN-RILEY, who having been duly sworn, deposes and says:

My name is Dr. Brenda Shuman-Riley. I am over the age of twenty-one (21) and competent to provide this testimony. This Affidavit is based on my personal knowledge of the facts contained below.

I was Principal of Sallie Zetterower Elementary School in the Bulloch County School District for the 1998/1999, 1999/2000 and 2000/2001 school years. At the beginning of the 1998-99 school year, I appointed Plaintiff as Grade Representative for the first grade and as Chair of the school's Reading First Program.

At the end of the 1998-99 school year when leadership positions were customarily reassigned for the following year, I appointed another teacher as Grade Representative for the first grade and appointed Assistant Principal Shirley Cobb to chair the Reading First Program. Neither decision was based on Plaintiff's race. One factor in these decisions was to allow Plaintiff more time for her classroom duties. I assigned Shirley Cobb to chair the Reading First Program for two reasons: (1) because Shirley Cobb was an administrator, and administrators were leading the Reading First Program for all of the other schools; and (2) because I realized during the 1998-1999 school year that chairing the Reading First Program required much more time and effort than a classroom teacher should handle.

During the 1998-99 school year, I gave Plaintiff permission to leave school during the day to check on a friend's daughter. I was unaware that Plaintiff intended to go to another elementary school to meet with her goddaughter's teacher. I was later informed by Dr. Joe Goodwin, who was Principal of Mattie Lively Elementary School, that Plaintiff had visited one of his teachers during school hours and that the teacher became upset by Plaintiff's visit. According to Dr. Goodwin, the teacher said she would consider it harassment if it happened again. Following this conversation with the other principal, I met with Plaintiff and told her that the other teacher did not think the conversation was a good one and that, according to the other teacher's principal, the teacher would consider it harassment if it happened again. Plaintiff's race was not a factor in this

conversation nor was it a factor motivating me to have this conversation with Plaintiff.

Also during the 1998-99 school year, I was informed that one of Plaintiff's students brought a real-looking toy gun to school and was playing with it during recess. When I asked Plaintiff about this toy gun, Plaintiff informed me that she was not aware that the child had a toy gun at school. I told Plaintiff that she needed to do a better job of watching her students. I did not make this statement to Plaintiff based on her race. Rather, I wanted Plaintiff to remember the cautions that the staff had been given during pre-planning and training sessions earlier in the year that teachers needed to be on the lookout for any sort of look-alike weapon or any inappropriate object.

During the 1999-2000 school year, I recognized Plaintiff for receiving her Master's Degree from Cambridge University. I also shared Plaintiff's thesis with the faculty and staff and told Plaintiff I would make it available in the teacher's resource room so that other teachers could view it. I did not discriminate against Plaintiff on the basis of race with regard to Plaintiff achieving an advanced degree.

Also during the 1999-2000 school year, Plaintiff had a volunteer, Tara Kirkland, in her classroom. Ms. Kirkland volunteered to work in other areas at Sallie Z. I told her about a need we had in the media center, and Ms. Kirkland volunteered to work there. Tara Kirkland was not removed from Plaintiffs classroom based on Plaintiff's race.

At the end of the 1999-2000 school year, I transferred Plaintiff from teaching first grade to teaching second grade for the 2000-01 school year. Plaintiff was not the only teacher who switched grades that year. I switched white teachers to different grades as well. This move was made as a

part of a school-wide vertical alignment to coordinate the curriculum throughout the grade levels in order to improve the instructional process. Plaintiff was not moved to the second grade based on her race or to facilitate harassment.

Also prior to the 2000-01 school year, Plaintiff failed to sign up for any committees. Therefore, I assigned Plaintiff to participate on the Social Studies and School Accreditation Committees during that year, as well as the Arbor Day/Grounds/Playground Committee.

At the beginning of the 2000-01 school year, Plaintiff discussed with me her concerns that her classroom was not as racially, sexually, and academically balanced as other second grade classes at the school. I never rejected Plaintiff's contentions regarding the racial and gender makeup of Plaintiffs classroom. As a matter of fact, I validated her concerns. However, the imbalance in Plaintiffs classroom was due to the makeup of the second grade that particular year and because several students moved away during that year or never showed up the first day of class after the class roster had already been compiled, not because of Plaintiffs race.

Eventually, due to students moving, there was only one white female left in Plaintiff's class. Her mother and grandmother complained to me that Plaintiff had called to their attention the fact that their child was the only white female in her class. This raised concerns in their minds that the child would not be treated fairly by Plaintiff. I therefore removed the white female from Plaintiff's classroom at the mother and/or grandmother's request.

In the fall of 2000 I had to remove Plaintiffs report cards from her desk in her absence, because I needed to obtain information concerning a student's attendance report or

academic achievement at the parent's request. After I obtained the necessary information, I returned the report cards to Plaintiff's desk. Plaintiff's desk was not "searched", and I did not retrieve the report cards because of her race.

In February 2001, Plaintiff brought a puppy to school on a day I was absent from school. Plaintiff did not ask my permission to bring this puppy to school. When I returned to school the next week and learned that the puppy had been at school, I informed Plaintiff that she should have informed me ahead of time that she was bringing the puppy and made sure that arrangements were taken care of as far as her classroom duties were concerned. I told Plaintiff this so that she would be aware of my preferences with regard to having permission prior to bringing animals on campus. I did not make this statement to Plaintiff because of her race.

I required all teachers to turn in an "early pass" if the teacher left school early. Plaintiff was not required to use an early pass because of her race, but because I required that early passes must be turned in when any teacher leaves school early.

I understand this Affidavit will be submitted as evidence in support of Defendants' Motion for Summary Judgment in the above-styled action. If called to testify, the above will be my testimony on this matter.

s/Brenda Shuman-Riley

Sworn to and subscribed before me,
This 30th day of June, 2003
s/_____Johnson
NOTARY PUBLIC
My Commissions expires August 23, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff,

v. Civil Action No. 6:01-CV-134

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, Individually and in His Official Capacity as Superintendent of the Bulloch County School District; EUGENE NATSON, JR., Individually and in His Official Capacity as Assistant Superintendent for Personnel of the Bulloch County School District; SHIRLEY COBB, Individually and in Her Official Capacity as Assistant Principal of Sallie Zetterower Elementary School; and BRENDA SHUMAN-RILEY, Individually and in Her Official Capacity as Former Principal of Sallie Zetterower Elementary School,
Defendants

PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS AND CONCLUSIONS OF LAW

COMES NOW Brenda E. Tremble, Plaintiff in the above-referenced cause of action and in accordance with the Federal Rules of Civil Procedure in conjunction with the Local Rules of the Southern District of Georgia, responds to Defendants' Statement of Material Facts and shows that there are genuine issues to be tried and Plaintiff files her motion to amend Plaintiff's pleading to conform to the evidence and shows the Court the following:

PLAINTIFF'S DISPUTATION OF DEFENDANTS' STATEMENT OF MATERIAL FACTS

Plaintiff disputes the Defendants statement of facts in their particularity and show that there are genuine issues for a jury to try. For clarity and convenience of the Court, the Plaintiff is denoting each Defendants' material fact by adding the identifier "Defendants' MF(1), Defendants' MF(2), Defendants' MF(3) . . ", where "MF(1)" means "Material Fact (1)," and in like manner for each of the Defendants' statement of material facts. Additionally, with respect to use of the student's name, without waiving Plaintiff's present objection to the Defendants' various motions to seal depositions, Plaintiff will use the student's initial and last name in this pleading, or future pleadings, and in depositions, will redact first names except leaving the first initial and last name if used. The Plaintiff shows the Court as follows:

Defendant's MF(1): Brenda E. Tremble ("Plaintiff') was a teacher at Sallie Zetterower Elementary School ("Sallie Z") from 1994 - 2001. (First Amended Complaint, ¶ 9).

Plaintiff Response to MF(1): Admitted.

Defendant's MF(2): Sallie Z is a school in the Bulloch County School District ("BCSD").

Plaintiff Response to MF(2): Admitted.

Defendant's MF(3): During the 1998/1999, 1999/2000 and 2000/2001 school years, Dr. Brenda Shuman-Riley ("Defendant Riley") was employed by the BCSD as Principal and was assigned to Sallie Z. (First Amended Complaint, ¶ 11).

Plaintiff Response to MF(3): Admitted.

Defendant's MF(4): Dr. Lynn Batten ("Defendant Batten") was the Superintendent of the BCSD from 1996-2003. (Lynn Batten depo., p. 11, 22).

Plaintiff Response to MF(4): Admitted.

Defendant's MF(5): Mr. Eugene Natson, Jr. ("Defendant Natson") is the Assistant Superintendent for Personnel, a position he has held since 1992. (Eugene Natson, Jr., depo., p. 12).

Plaintiff Response to MF(5): Admitted.

Defendant's MF(6): Mrs. Shirley Cobb ("Defendant Cobb") has been Assistant Principal of Sallie Z since approximately 1985. (Shirley Cobb depo., pp. 11-12).

Plaintiff Response to MF(6): Admitted.

Defendant's MF(7): Under Georgia law, punitive damages are not authorized against
Public entities such as the BCSD. Metropolitan Atlanta Rapid Transit Authority v. Boswell, 261 Ga. 427, 405 S.E.2d 869 (1991); Georgia v. City of E. Ridge, 949 F. Supp. 1571 .D. Ga. 1996).

Plaintiff Response to MF(7): Disputed, as federal law controls. Carey v. Piphus 435 U.S. 247, n.11 (1978).

Defendant's MF(8): Defendant Riley appointed Plaintiff chair of Sallie Z's Reading First Program and First Grade Representative for the 1998/1999 school year. (First Amended Complaint, T ¶ 12).

Plaintiff Response to MF(8): Plaintiff incorporates

Plaintiff's responses to Defendants MF(1)-MF(7) as though fully set forth herein. Plaintiff admits she was appointed grade representative prior to the start of the 1998-99 school year. However, Plaintiff disputes she was appointed chair of Sallie Z's Reading First Program. As a result of discovery, the evidence shows the Plaintiff was actually appointed to the position entitled "Reading First Project Director," (**Exhibit 1**, Third-Party Subpoena 0135 and 0137), one and the same as the School Level Project Director, (**Exhibit 2**, D 0909), involving all of the duties assumed by the principals of the BCSD's school during 1997-1998, (**Exhibit 3**, D 0901), and a genuine issue still in dispute, is why Defendant Riley improperly appointed Plaintiff to assume Riley's responsibilities. Defendant Batten testified that he recognized the names of his principals and that they were indeed the school-level project director as indicated on the documents, except for Sallie Z. (**Exhibit 4**, Batten's depo. pp. 95-98). There is a genuine issue of material fact for the jury to try on whether Dr. Riley's alleged appointment of Plaintiff, a First Grade teacher, to the position of Project Director was a proper exercise of her power of appointment, and therefore, Defendants' MF(8) is not a material fact to which there is no genuine issue to be tried by the jury. Therefore, there is a genuine issue of material fact in dispute as to Defendant's Material Fact (8)

Defendant's MF(9): The positions of Reading First Program Chair and Grade Representative did not carry additional pay or benefits. (Natson aff., p. 2).

Plaintiff Response to MF(9): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(8) as though fully set forth herein. Plaintiff disputes the factual allegations that the positions of Reading First Project Director aka Program Chair and Grade Representative did

not carry additional pay or benefits. The scope of the prohibition is not limited to "economic" or "tangible" discrimination, and it covers more than "terms" and "conditions" in the narrow contractual sense. National Railroad Passenger Corp. v. Morgan, at 2073-2074. Therefore, there is a genuine issue of dispute on what constitutes additional pay or benefits. Documentary evidence from the Defendants reveals one of the component of a teacher's evaluation is "Professional Growth," (**Exhibit 5**, D 0009), and in a teacher's mind, that is a huge benefit, and the annual teacher evaluations takes into account at an minimum "Participation in professional development opportunities and the application of concepts learned to classroom and school activities," (**Exhibit 6**, D 0096). Therefore, a jury could reasonably conclude that it is a major benefit for teachers to have opportunities to participate in professional development programs, such as working on school committees, district and state projects, and holding leadership roles, as was the case with the present Plaintiff. Board Policy expects certified personnel to maintain and improve skills and competencies and requires opportunities be provided for the development of increased competence "beyond that which they may attain through the performance of their assigned duties." (**Exhibit 7**, Board Policy GAD p. 1). Additional pay may be paid for participation in staff development activities in the form of stipends, (**Exhibit 8**, Board Policy GAD p. 2), a way many teachers supplement their salaries, (Plaintiff's Aff.). For example, the Reading First Project included in the Budget an amount for Stipends to be paid to the participants at Sallie Z, (**Exhibit 9**, Third-Party Subpoena 0133). Therefore, there is a genuine issue of material fact in dispute as to Defendant's Material Fact (9).

Defendant's MF(10): At the end of the 1998/1999 school year, Defendant Riley reassigned another teacher to serve in

the capacity as Grade Representative for the first grade and reassigned Defendant Shirley Cobb to chair the Reading First Program. (First Amended Complaint ¶ 18). This was the time in which these leadership positions were customarily reassigned. (Riley aff., p. 2).

Plaintiff's Response to MF(10): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(9) as though fully set forth herein. Plaintiff disputes Defendant Riley made the reassignment of the Grade Representative to another teacher, a white female, and of the Project Director to the Assistant Principal, a white female, in the same manner as these leadership positions had been customarily reassigned in the past. It was customary for the principal to allow a teacher to continue in a committee assignment or leadership position for at least two consecutive years and sometimes longer, (Plaintiff's Aff.), to preserve continuity in implementation of ongoing new programs and teaching strategies, such as the case with the Reading First Program being implemented for the first time at Sallie Z, (Plaintiff's aff.). Because there are more committees assignments available at Sallie Z than there are faculty and staff to assume the responsibilities, most faculty serve on more than one committee as a matter of necessity, as is depicted in the Sallie Zetterower School Committees 2000-2001, (**Exhibit 10**). Therefore, there is a genuine issue of dispute over the material fact of whether Defendant Riley's removing Plaintiff from both leadership positions, when Plaintiff only requested to be removed from one position with her preference to remain as the Reading First Program Project Director, (Plaintiff's Aff.), and reassigning the positions two white employees, one, Defendant Cobb, who was inexperienced in the Reading First Program, or at least, far less experienced than the Plaintiff, (Plaintiff's Aff.). In light of the fact that the faculty had to double up on committees, a jury could

reasonably conclude that but for Plaintiff having complained to Defendant Natson, the Assistant Superintendent for Personnel, Defendant Riley would have reappointed Plaintiff to both leadership positions. A jury could further reasonably conclude that Defendant Riley's sudden removal of Plaintiff, within a few days after Plaintiff made her complaint to Natson, was done in retaliation for Plaintiff having made those complaints to Natson.

Defendant's MF(11): Plaintiff did not lose any benefits or suffer a salary decrease when she was removed as Chair of the Reading First Program and Grade Representative. (Natson aff., p. 2).

Plaintiff Response to MF(11): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(10) as though fully set forth herein. Plaintiff disputes the allegation that she did not lose any benefits or suffer a salary decrease when she was removed as the Reading First Project Director. There is a genuine issue of dispute over the material fact of constitutes a benefit to teachers in their work environment. The BCSD's Final Expenditure System Reading First Budget Report for 1999-2000 shows the County expended $6,671.89 in stipends to teachers, (**Exhibit 11,** Third-Party Subpoena 0046), and the Sallie Z's Summary Sheet Total School Budget Reading First Funds shows $1,450.00 expended for Staff Development, (**Exhibit 12,** Third-Party Subpoena 0088). Teachers view these stipends as supplements to their regular salaries, and they consider stipends a valuable benefit to them personally and to their families, (Plaintiff's Aff.). Plaintiff lost significant professional growth opportunities. Plaintiff's Response to MF(9)shows that by serving in those leadership roles, Plaintiff would have helped herself to meet Board Policy that requires "All professionally certified teaching, support, and administrative personnel will be

evaluated annually for performance appraisal and professional development purposes.
(Exhibit 13, Board Policy GBI). Natson testified that one of the Plaintiff's complaints was that she did not receive her stipend **(Exhibit 14,** Natson's depo. p. 72, L4-15; p. 82, L20-p. 83, L12). Therefore, a jury could reasonably conclude that Plaintiff lost valuable benefits, short-term monetary and long-term professional growth, by her sudden removal from the two leadership roles.

Defendant's MF(12): Plaintiff's removal from the positions of Grade Representative and Chair of the Reading First Program were not adverse employment actions. Davis v. Town of Lake Park Florida, 245 F.3d 1232 (11th Cir. 2001).

Plaintiff Response to MF(12): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(11) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. First, Plaintiff contends Davis v. Town of Lake Park Florida, 245 F.3d 1232 (11th Cir. 2001) is inapplicable to a hostile or abusive work environment claim. There, the Plaintiff, a black police officer, alleged he suffered adverse employment action based on race in the form of two corrective job performance memos placed in his personnel file and two instances where he was temporarily removed as the designated officer-in-charge. Under the analysis of National Railroad, this officer was complaining of discrete discriminatory acts not repeated conduct and for that reason, each discrete act must be independently discriminatory, National Railroad Passenger Corp. v. Morgan, at 2072, unlike the hostile work environment claim where their very nature involves repeated conduct. National Railroad Passenger Corp. v. Morgan, at 2073. The Supreme Court held that "as long as the employer has engaged in enough activity to make out an actionable hostile environment claim,

an unlawful employment practice has 'occurred,' even if it is still occurring." National Railroad Passenger Corp. v. Morgan, at 2074. The present Court's task is to determine whether the acts about which the Plaintiff complains are part of the same actionable hostile or abusive work environment practice, and if so, whether any act falls within the statutory time period. National Railroad Passenger Corp. v. Morgan, at 2076. Because Defendant Natson simply referred the Plaintiff's initial and succeeding complaints back to Defendant Riley, (**Exhibit 15,** Natson's depo. p.67,L15-p.68,L18; p.77,L4-18; p.78,L12-p.79,L10; p.85,L18-p.86,L8;), who in turn, continued to do seemingly little acts, but the cumulative effect of these little acts were to obstruct Plaintiff's path to further professional growth, setting her up for possibly future disciplinary actions, poorer teacher evaluations and then in turn, these negative effects would likely obstruct the Plaintiff's path to future advancement in the teaching field. Therefore, the Court can reasonably make a conclusion of law that the removal of Plaintiff from the two leadership positions was a component of the hostile or abusive work environment claim that constitutes one unlawful employment practice. Defendant Riley's articulated nondiscriminatory is inapplicable under a hostile or abusive work environment claim.

Defendant's MF(13): Plaintiff s transfer from first grade to second grade was not an adverse employment action. Bell v. Eufaula City Bd. of Educ., 995 F. Supp. 1377 (M.D. Ala. 1998).

Plaintiff Response to MF(13): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(12) as though fully set forth herein. Plaintiff disputes Defendants' allegation in its entirety. For the same reasons stated above, the Court can reasonably conclude that Defendant Riley's

removal of Plaintiff from the First Grade to the Second Grade was yet another component of the hostile or abusive environment claim, and therefore, the unlawful employment practice is complete. First, Plaintiff did not transfer; Defendant Riley unilaterally moved Plaintiff from First to Second Grade, without giving Plaintiff a choice, (Plaintiff's Aff.). While, on the other hand, Defendant Riley moved a white teacher, Janice Wilson, who Riley consulted with first to enlist her support for the move, (**Exhibit 16,** Wilson's depo. p. 31,L21-23). A reasonable jury could conclude that the manner in which Riley handled Plaintiff's grade-level change, Riley meant for the removal to be seen as punitive to Plaintiff, and further, a reasonable jury could conclude that Riley's punitive attitude was based on race. These credibility issues are issues for the jury to decide. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253-55, (1986) (credibility determinations are a jury function).

Defendant's MF(14): There is no evidence that Dr. Riley subjected Plaintiff to "harsh and unfair criticism and discipline".

Plaintiff Response to MF(14): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(13) as though fully set forth herein. Plaintiff disputes the allegations in their entirety. Defendant Riley criticized and disciplined the Plaintiff for bringing her son's miniature puppy to school when there was no Board Policy or Sallie Z policy requiring either a parent or teacher to obtain prior permission from the principal before bringing the pet to school campus. (**Exhibit 17,** Natson's EEOC Statement p.2). Based on that fact along, a reasonable jury could conclude that Defendant Riley's actions violated Plaintiff's due process rights. A reasonable jury could conclude that the Defendants' articulated nondiscriminatory reason of safety is a pretext, in light of the

fact Riley had not set forth any such rule prior to February 2, 2001 incident with Plaintiff and the puppy, and only sought to do so after she violated Plaintiff's due process rights. Defendant BCSD in its Teacher Evaluation Manual set forth guidelines for principals to follow in implementing rules to assure teachers of due process, in part: "Rules must be reasonable and related to efficiency, effective job performance, goals of the organization, and safety and security" and "Rules should be publicized," (**Exhibit 18,** D 0012). BCSD states further, in part, that "Rules must be clearly and effectively communicated to the employee. . . . Facts must be investigated thoroughly and objectively," and "Rules must have been enforced consistently and uniformly," (**Exhibit 18,** D 0012). Defendant Riley subjected Plaintiff to "harsh and unfair criticism and discipline" in regard to the event in the lunchroom, when Cathy Deal drew Plaintiff's attention to student J.'s lunch. Deal had noticed that J. was eating sweets only for lunch, and Deal reported this observation to Plaintiff, the student's teacher. (Plaintiff's Affidavit ¶ 22 and Riley's Notes, **Exhibit 19,** D 0596). The student was previously diagnosed with the medical condition ADHD. Plaintiff sent two notes home to J's parent indicating nature of J's lunch and observations of his behavior, (**Exhibit 20,** D 0599 and D 0600). The parent became defensive and wrote letter to Plaintiff, (**Exhibit 21,** D 0603-0607) and consulted with her son's Licensed Psychologist who wrote a note also to Plaintiff (**Exhibit 22,** D 0602), and wrote a note to Defendant Riley, providing copies of these various notes to Riley, (**Exhibit 23,** D 0598). Defendant Riley called Plaintiff into the office not to support Plaintiff in her effort to follow BCSD's policy and concern about the student's health, but to find out why Plaintiff mentioned her (Riley's) name in Plaintiff's conversation with the mother, making it appear that Riley, as the principal, was also concerned about J's nutrition. (**Exhibit 19,** D 0596).

Plaintiff brought a legitimate concern to the attention of a parent. Center for Science in the Public Interest placed on its website an article entitled, "Studies Show that Diet May Trigger Adverse Behavior in Children" in which they proclaim a new review of two dozen scientific studies contends that food dyes and certain foods can adversely affect children's behavior. In particular they said with respect to ADHD that "federal agencies, professional organizations, and the food industry ignore the growing evidence that diet affects behavior. (**Exhibit 24,** CSPI NEWSROOM, Release October 25, 1999, www.lcspinet.org/new/adhdpr.html. Board Policy stated that providing "well-balanced meals that are nourishing" is the purpose of the food service program, that "It is the responsibility of the school to ensure the health of its students by providing a school nutrition program which meets all health requirements,"(**Exhibit 25,** Board Policy EE) and Board Policy defined foods of Minimal Nutritional Value as "soda water, chewing gun, certain flavored candies, candy coated popcorn, and other items as specified in federal regulations," (**Exhibit 26,** Board Policy JGHA). The School District employed a Director of Nutrition to oversee the schools nutrition programs (**Exhibit 27,** Defendant Batten's Depo pp. 196-197) and the District also provided nutritional information to parents on the District's website, advising parents about fruits and vegetables, serving sizes, and that "We believe that a well-nourished child will learn better at school," (**Exhibit 28,** Defendant Batten's Depo pp. 198-202 and Exhibit P7 to Deposition dated May 22, 2003). Moreover, Plaintiff was following BCSD policy when she wrote note to parent and in conversation used Defendant Riley's name in support of school policy. The "Lunchroom Information" policy states, in part, "Lunches which students bring from home should not contain soft drinks or fast food items," (**Exhibit 29**, BCSD 1998-99 Student Handbook, p.

34), and this policy continued during school year 1999-2000, (**Exhibit 30**, BCSD 1999-2000 Student Handbook, p. 34), and during 2000-01, (**Exhibit 31**, BCSD 2000-01 Student Handbook, p. 7). However, when a black parent complained that Margaret Klutz, a white teacher, yelled at her child inappropriately, Defendant Riley immediately jumped to Klutz's defense, only to learn that Klutz had already admitted the inappropriate behavior to the parent, apologized to the parent, and was in the process of getting the child so she (Klutz) could apologize to the child in front of her mother, (**Exhibit 32,** Witness Interview of Brenda Lowe, Track 1, Crisp & Associates Private Investigations). Further, Klutz testified that she didn't recall talking to Defendant Riley about this incident, and that Riley did not given her any written or verbal warnings, (**Exhibit 33,** Klutz's Depo pgs. 15-20, L8 with depo. Exhibit P1). A reasonable jury could conclude Defendant Riley made a special effort to treat any situation with Plaintiff as an opportunity to criticize and blow out of proportion minor situations amounting to no violation at all and to issue verbal warnings and write notes in Plaintiff's personnel file to build a base for later disciplinary action against Plaintiff. A reasonable jury could conclude that Plaintiff's perception of Defendant Riley being "after her" or "harassing" or "abusing her" based on race was a reasonable perception under the circumstances. Defendant Riley wrote Plaintiff a note (**Exhibit 34,** D 0611) concerning Accelerated Reader (AR) folders and phrased the note in such a way to make it appear as though Plaintiff had a general problem of not noting the reading levels of the students on their AR folders, when in fact, only one student's folder was observed without a reading level, (Plaintiff's Affl.). Curious as to how Riley became aware of such a small matter, Plaintiff checked with Joanne Newland, the librarian, to see what Plaintiff had done wrong that required Newland to go to Dr. Riley, and Newland informed Plaintiff that Dr.

Riley was standing there when one of Plaintiff's students happened to be checking out a book and Riley saw that no check was in the folder. (Plaintiff's Aff. ¶ 36) Plaintiff went to get clarification from Riley on the matter, and Riley said to Plaintiff, "I have staff designated to tell me things." At that point, Plaintiff told Riley that Newland had told her that Riley was standing there when one of her students happened to be checking out a book and the folder was not marked with a reading level. Riley looked shocked and displeased that Plaintiff knew she was not telling Plaintiff the truth. (Plaintiff's Aff. ¶ 36). If Riley was trying to be fair, she would have taken a few minutes to investigate the matter with Plaintiff to find out the situation, but instead, Riley used this as another opportunity to criticize Plaintiff and make her appear incompetent. Therefore, there is a genuine issue of dispute on the material fact of whether Defendant Riley subjected Plaintiff to "harsh and unfair criticism and discipline," and for this reason, summary judgment must be denied.

Defendant's MF(15): There is no evidence that Dr. Riley "forced Plaintiff to treat white or multiracial students more favorably than black students and punished Plaintiff if she did not".

Plaintiff Response to MF(15): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(14) as though fully set forth herein. Plaintiff disputes Defendants allegations in their entirety. Defendant Riley told Plaintiff that a parent, and the parent's mom, was mad at her because of a letter on Promotion/Retention criteria that Plaintiff sent home, (Plaintiff' Aff. ¶ 15). After conferencing with the parents, Riley told Plaintiff not to keep the student, a bi-racial boy, in from recess when his butterfly is moved, in accordance with the Grade Level disciplinary plan,

previously prepared by the grade-level teachers and approved by Riley, (Plaintiff' Aff. ¶ 15), and in accordance with Board Policy on student discipline, (**Exhibit 35**). Riley's instructional order went against the approved discipline plan established at the beginning of the year, (Plaintiff' Aff. ¶ 15) A few weeks later the same student was spotted with a real looking toy gun at recess that he kept hidden from Plaintiff in the classroom, (Plaintiff' Aff. ¶ 15). A student went home and told her mom about seeing the toy gun and the mom called Riley, (Plaintiff' Aff. ¶ 15). Defendant Riley called Plaintiff into her office to tell her that she needed to do a better job of "eye balling" her students, (Plaintiff' Aff. ¶ 15). Without doing a thorough investigation in accordance with Board Policy previously cited as Exhibit 18, Riley "jump the gun", again, clearly implying to Plaintiff that she was not properly supervising her students in general, and that Plaintiff was responsible for not catching this student with the toy gun, (Plaintiff' Aff. ¶ 15). Plaintiff reminded Defendant Riley that under the current school district's policies, a teacher can only search a student with cause, (**Exhibit 36,** Excerpt Board Policy JCAB), including book bags, which students were allowed to bring to school and keep in locker or desk, (**Exhibit 37,** 1998-99 School Year), and in school year 1999-2000, parents were encouraged to purchase clear or open mesh book bags, (**Exhibit 38**), and in school year 2000-01, parents were required to purchase clear or open mesh book bags, (**Exhibit 39**). However, Riley's testimony (**Exhibit 40,** Riley's Depo pp. 120-128, L2) of a legitimate nondiscriminatory reason for singling out Plaintiff is a mere pretext, for Plaintiff on this occasion was not assigned recess duty, (Plaintiff' Aff. ¶ 15)., but rather, a white teacher-parapro, Gean Herrington, and Herrington testified Riley said nothing to her about the incident, (**Exhibit 41,** Herrington's depo. pp.43-45). A reasonable jury could conclude that, once again, Defendant Riley seized an opportunity to

criticize, admonish, and make Plaintiff appear incompetent and not performing her extra duties as a teacher. Also, a reasonable jury could conclude that Defendant Riley's unjustified criticism on this occasion was an additional component of the hostile or abusive work environment being created by Defendant Riley. Plaintiff complained to Natson, (Plaintiff' Aff. ¶ 15)., Natson simply referred complaint back to Riley, and on this basis, a reasonable jury could conclude that Natson's failure to respond appropriately and take reasonable steps to resolve Plaintiff's complaints also constitute another component of the hostile or abusive work environment claim being created by Riley

Defendant's MF(16): There is no evidence that Dr. Riley "undermined Plaintiffs efforts to train, mentor and discipline students ".

Plaintiff Response to MF(16): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(15) as though fully set forth herein, and on this basis, Plaintiff disputes Defendants' allegations in their entirety.

Defendant's MF(17): Plaintiff composed a handbook entitled "Teachers Helping Teachers" for her Master's project. Dr. Riley shared this handbook with the faculty and staff at Sallie Z. (Plaintiff depo., pp. 20, 22).

Plaintiff Response to MF(17): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(16) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. There is a genuine issue of dispute on the material fact of whether Defendant Riley "shared" with the faculty Plaintiff's handbook. Plaintiff had developed the "Teachers Helping Teachers" handbook to fill a needed gap in the training of new faculty or assisting

current faculty at Sallie Z, (Plaintiff' Aff. ¶ 28). All Defendant Riley did was held the handbook up briefly during a faculty meeting, and indicated to faculty she would make it available for faculty use, (Plaintiff' Aff. ¶ 28). However, Riley had no such intention of doing anything that would be beneficial to Plaintiff's reputation as a professional, and this is true because Riley simply put the handbook back into Plaintiff's box without making any copies for distribution for placement in resource center, (Plaintiff' Aff. ¶ 28). A reasonable jury could conclude that Riley put the handbook back into Plaintiff's mailbox as a "slap in the face", further giving Plaintiff the subtle, yet powerfully intimidating, message to the effect that Riley doesn't have, and won't, do anything to help Plaintiff's professional growth, although Board Policies, previously cited as Exhibits 6 and 7, require Riley to make opportunities available to all teachers alike. However, a reasonable jury could conclude that if you were black teacher and complained about Riley, Board Policies did not apply to you, at least not according to Riley's implementation of the policies. Therefore, there is a genuine issue of dispute of the material fact of whether Defendant Riley "shared" Plaintiff's "Teachers Helping Teachers" handbook

Defendant's MF(18): The terms, privileges or conditions of Plaintiff's employment were never impacted by Defendants' actions.

Plaintiff Response to MF(18): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(17) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. The U. S. Supreme Court has repeatedly made clear that although Title VII mentions specific employment decisions with immediate consequences, the scope of the prohibition is not limited to

"economic" or "tangible" discrimination, and that it covers more than 'terms' and 'conditions' in the narrow contractual sense. Id. at 2073-2074. The U. S. Supreme Court further stated that the phrase "terms, conditions, or privileges of employment" under 42 U.S.C. § 2000e-2(a)(1) evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment, which includes requiring people to work in a discriminatorily hostile or abusive environment. Id. at 2074. The Supreme Court further instructs that workplace conduct is not measured in isolation. Thus, when the workplace is permeated with "discriminatory intimidation, ridicule, and insult," that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," Title VII is violated. Id. at 2074. Although the U.S. Supreme Court stated mere utterance that engenders offensive feelings is insufficient, but the Court held "if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21-22 (1993). Moreover, the Supreme Court held, "But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers." Harris v. Forklift Systems, Inc., 510 U.S. 22. Defendant's Natson failed to investigate or otherwise take steps to reasonably resolve the Plaintiff's initial complaints about Defendant Riley, instead, Natson referred the initial complaints back to Riley, as previously cited, (Exhibit 15, Natson's Depo p. 67, L23-68, L18; p. 77, L4-19; p.78. L16-10;) and thereafter, he continued to ignore

the Plaintiff's continuing complaints and continued to refer the Plaintiff's complaints back to Riley, thereby subjecting the Plaintiff to a pattern of retaliation. Plaintiff complained to Natson about the retaliation from Riley and Natson also referred these complaints back to Riley. Natson's testified that for him to take the Plaintiff's concerns as complaints, Plaintiff needed to have used certain words (**Exhibit 42,** Natson's Depo p.73-76, L21). When on February 6, 2001 the Plaintiff came to the District in an obvious state of distress and Natson saw her and intercepted her and determined from Plaintiff that certain events had just occurred at Sallie Z between Plaintiff, Riley and Cobb and that these events were the basis of the Plaintiff's distraught state, Natson failed to refer the Plaintiff to the District's Panel of Physicians, in accordance with the Workers' Compensation laws, (**Exhibit 43,** Natson's Depo p. 91, L3-13; p. 93, L3-p.101, L2; p.102,L13-p.113, L17; p.124, L25-p.128,L18), but Natson didn't forget to refer Plaintiff back to Riley by suggesting Plaintiff write what would surely be an ill-fated letter explaining Plaintiff's feelings to Riley. (**Exhibit 44,** Natson's depo. pp. 87-88; Plaintiff's aff. , **Exhibit 45,** Riley's Notes D 0625). A reasonable jury could conclude that Plaintiff's terms, conditions, or privileges, and state of mind had all been affected by the conduct of Defendants Riley and Natson, and Defendant Batten, who knew of the ongoing conflict based on notice from Riley, (**Exhibit 46,** Riley's Note D0616; **Exhibit 47,** Riley's Note D 0650; and **Exhibit 48,** Riley's Note D 0651). With respect to the Family Medical Leave Act (FMLA), Natson testified that Plaintiff granted FLMA for the balance of the school year of 2000-01. (**Exhibit 49,** Natson's Depo p.113,L22-p.114,L21). However, BCSD responded to the Teachers Retirement System (TRS) request for completion of the TRS Form 8 by last employer and the BCSD's response shows that Plaintiff received no FMLA benefits, (**Exhibit 50,** D 0009-D 0012).

Based on the Contract of Employment between the Plaintiff and Defendant BCSD, "The terms and conditions of this contract are made expressly subject to provisions of the Constitution and the laws of the State of Georgia," (**Exhibit 51,** D 0176-0177). Based on the language of the contract, this Court can reasonably conclude that the term "the Constitution and the laws of the State of Georgia" can be interpreted to mean both the U.S. Constitution and the Georgia Constitution and the laws of the State of Georgia. Therefore, there is a genuine issue of dispute of material fact and law on whether any terms, privileges or conditions of Plaintiff's employment were violated, and for this reason, the Court must deny summary judgment to the Defendants.

Defendant's MF(19): Plaintiff was not constructively discharged.

Plaintiff Response to MF(19): The Plaintiff incorporates by reference the Plaintiff's Response to MF(1) through (18) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. The standard for determining whether an employee has been constructively discharged was established by the 11th Circuit in Buckley v. Hospital Corp. of America, Inc., 758 F.2d 1525, 1530 (11th Cir. 1985). The general rule is that if the employer deliberately makes an employee's working condition so intolerable that the employee is forced into an involuntary resignation, then the employer has accomplished a constructive discharge and is as liable for any illegal conduct involved therein as if it had formally discharged the aggrieved employee. Several factual issues must be resolved by the jury: (1) did the Defendants act deliberately, individually or collectively, to make the Plaintiff's working environment hostile or abusive; (2) would a reasonable teacher similarly situated as the Plaintiff perceive her working environment to be hostile or abusive?

(3) Would a reasonable teacher similarly situated as the Plaintiff find her working condition so intolerable that the teacher would feel forced to resign? Deliberate indifference, however, is defined differently for Eighth Amendment and municipal liability purposes. In the prison conditions context, deliberate indifference is a subjective standard requiring actual knowledge of a risk by the official. In the municipal liability context, deliberate indifference is an objective standard, which is satisfied if the risk is so obvious that the official should have known of it. *See generally* Farmer v. Brennan, 511 U.S. 825, 840-42, 114 S.Ct. 1970, 1980-82, 128 L.Ed.2d 811 (1994) (discussing City of Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989)). The Plaintiff contends the Defendants' conduct meet either or both of the deliberate standards, in that Defendant Batten delegated policy-making and procedures matters to Defendant Natson (**Exhibit 52,** Batten's Depo p.29,L15-30,L2; p.34,L23-p.35,L3), and Natson's knowledge is Batten's and BCSD's knowledge. The State of Georgia requires school districts to implement "a simple, expeditious, and fair process for resolving problems at the lowest administrative level," (**Exhibit 53,** P 001 O.C.G.A. 20-2-989.5) and Defendants Batten and Natson prepared and presented the BCSD's complaint and grievance policy to the Board and it was approved (**Exhibit 54,** D 0869-0874). Therefore, when Defendant Natson had the first meeting with the Plaintiff, he knew, or should have known, the BCSD's complaints and grievance policy and procedure, (**Exhibit 55,** Batten's Depo p.36, L15-p.38, L21; p.40, L20-p.42, L10) and Natson in fact testified that he assisted in preparation of the policy (**Exhibit 56,** Natson's Depo p.21, L12-23). Batten testified that for a teacher with a complaint about the principal that could not be resolved with the principal the teacher could take her complaint to the assistant superintendent for personnel, (**Exhibit 57,** Batten's Depo

p.42, L14-p.46, L17), to initiate the informal process. When questioned about the length of the informal process, Batten testified, "I don't know that there is any timeline placed on that. I'm not aware of any timeline," previously cited, (Exhibit 57, Batten's Depo p.46, L22-25). When questioned about how Natson knows when to end the informal process, or how it ends, Batten testified, "I have not given him specific directions, no, (**Exhibit 58,** Batten's Depo p.47, L3-6). When questioned about what the teacher should do if she has taken repeated complaints to Natson about the same principal and the informal process is not resolving the complaints, Batten testified, "I mean, if it cannot be resolved, I'm sure that he would inform the person of the procedure that could be followed," (**Exhibit 59,** Batten's Depo p.48, L1-p.49, L4). And when questioned about the informal policy not having a beginning or ending, Batten testified "There is no reference to timeline, if that's what you're asking . . . .It is not cited," previously cited, (Exhibit 59, Batten's Depo p.49, L5-18). Because Defendant Natson kept the Plaintiff going in circles, never attempting to take any reasonable steps to investigate her complaints, Defendant Riley was left to unleash her stealthy, but effective, attacks on the Plaintiff, masking her attacks under the cloak of petty criticisms, verbal and written criticisms, admonitions, reprimands and making these attacks in such a way that the Plaintiff felt humiliated and demoralized and Plaintiff knew and felt her job would soon be in jeopardy, since going to Natson was futile, as he simply referred everything back to Riley, until finally the Plaintiff reached her mental and emotional breaking point on February 6, 2001, (Plaintiff's aff.). Natson witnessed the Plaintiff in the height of her breaking point when, in her distraught state, she went to the BSCD's office to talk to anyone who would listen, not looking for Natson, and Natson saw her and immediately saw she was distraught, (**Exhibit 60,** Natson's Depo p.83, L15-

23; p.85, L18-p.89, L19). It was the foregoing failure on the part of the Defendants that led to Plaintiff having a complete breakdown, (Plaintiff's aff. and **Exhibit 61,** TRS Retirement Approval with Medical Board Review) and Natson's refusal to properly process the Plaintiff's workers' compensation claim through BCSD self-insurer Managed Comp, (**Exhibit 62,)**, and Managed Comp's unlawful action of denying Plaintiff's claim before receiving proper paperwork, (**Exhibit 63,** the Plaintiff was forced to seek and take a medical disability retirement, previously cited (Exhibit 61). Based on the foregoing facts and exhibits, a reasonable jury could conclude Plaintiff was constructively discharged when Plaintiff felt forced to retire. Therefore, there is a genuine issue of material fact for the jury to try on whether Plaintiff was constructively discharged.

Defendant's MF(20): Plaintiff retired from the Bulloch County School District. (Plaintiff depo., part 2, pp. 28-29).

Plaintiff Response to MF(20): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(19) as though fully set forth herein, and on that basis, Plaintiff disputes Defendants' allegations in their entirety.

Defendant's MF(21): Plaintiff was not replaced as Reading First Program Chair or because of Plaintiff' s race. (Riley aff., p. 2).

Plaintiff Response to MF(21): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(20) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. Prior to the time when Plaintiff made her initial complaint to Defendant Natson about Defendant Riley, Plaintiff testified the relationship between her and Riley went from fine to questionable, when Riley

admonished Plaintiff for not having detected a bi-racial student, V.D., had brought a toy but real-looking gun to school, (**Exhibit 64,** Plaintiff's Depo p.68, L5-16 and Plaintiff's Affidavit ¶ 3e). In using the term "fine", Plaintiff testified "It was fine in that me and others were, of course, getting to know the person [Riley]. It was as fine as it could be not knowing the individual. As in when I see anybody else, it's fine initially, but then . . . once you get to know a person's personality, their demeanor and their character, . . . that's when you may have a question." (**Exhibit 65,** Plaintiff's Depo p.71, L8-14). By the time Plaintiff made her initial complaint to Natson, several incidents had happened that made the relationship between Plaintiff and Riley questionable, (Plaintiff's Affidavit ¶ 3). It was after Plaintiff complained about the unfair treatment she had received from Riley that Riley changed her mind about allowing the Plaintiff to continue in a leadership role, (**Exhibit 66,** Plaintiff's Depo p.67, L21-25). It was implicit in Plaintiff's conversation with Natson that white principals were known to be difficult on black teachers, as Natson alluded to in a conversation with the Plaintiff, (**Exhibit 67,** Plaintiff's Depo p.47, L25-p.49, L14). With respect to the bi-racial student with the real looking toy gun, Plaintiff told Natson that Riley should have been talking to the white teachers who had recess duty instead of calling in Plaintiff, who did not have recess duty, (Plaintiff's aff. and **Exhibit 68,** Plaintiff's Depo p.72, L12-p.73, L8). When questioned about this toy-gun incident, Gean Herrington, the white parapro who had recess duty, along with other white teachers, claimed a memory lapse, "I can – I mean, kind of. I meanh, I can't – sort of. I can't recall the whole – I can't – no. I can recall something about it, but I can't remember any of the details," (**Exhibit 69,** Herrington's Depo p.43, L24-p.44, L11), and her testimony continued in like manner, (**Exhibit 69,** Herrington's Depo p.44, L12-p.45, L20). Based on the fact

that the individual Defendants and their various legal counsel, including the present counsel before she officially entered her appearance, met with Herrington and the other fact witnesses during the Summer of 2002, under the pretext of preparing the witnesses for their depositions when none of the witnesses had been noticed for a deposition. (**Exhibit 70,** Herrington's Depo p.6, L23-p.8, L22). Herrington testified that the Plaintiff was discussed at this meeting but not to investigate the facts to determine what happened, (**Exhibit 70,** Herrington's Depo p.9, L2-8). Herrington testified that a second group meeting took place around the week before her deposition, and again, the individual defendants and their legal counsel were present, previously cited, (Exhibit 70, Herrington's Depo p.9, L12-23). In a recent case, an attorney was disqualified from representing his client (the plaintiff) because the court determined that the attorney became a necessary fact witness after he discussed aspects of nonparty witnesses' testimony with them before and during their depositions, and as a result, the witnesses changed their testimony. The attorney had repeatedly and improperly invoked the attorney-client privilege to prevent disclosure of these conversations with these nonparty witnesses during the depositions. The court determined that counsel's representation of the nonparty witnesses was improper, but mainly disqualified counsel as a sanction for what appeared to be tainting testimony and witness tampering. Prosser v. Avanti Petroleum, Inc., No. 4:98 CV1104, 1116821 (E.D. Mo. Nov. 30,1999. Based on the foregoing facts, the present Court can apply the same reasoning in the present case, as the Defendants' counsel are attempting to hide under the attorney-client privilege, and also the tainting occurred on two occasions prior to the taking of depositions, one before the fact witnesses had been noticed for deposition and one after they were noticed. Therefore, a reasonable jury could infer that the fact witnesses' memory losses about matters

supportive of the Plaintiff's claims are the product of the Defendants counsels' tainting of the witnesses. There is a genuine issue of dispute for the jury to decide over the material fact of witnesses' credibility with respect to portions of their testimony, and for this reason, summary judgment must be denied. Furthermore, Defendant Riley's articulated nondiscriminatory reason is not credible. Defendant Riley knew from the beginning that she was taking unfair advantage of the Plaintiff by assigning Plaintiff to perform the principal's job as the Reading First Project Director, previously cited. Riley's reasons for removing Plaintiff are a mere pretext for her discriminatory treatment of the Plaintiff. Riley was aware, or should have been aware, of the amount of responsibility Reading First Director position required, as Defendant Riley received pertinent Reading First information describing the program responsibilities, (**Exhibit 71,** D 0909, D 0898-0900, D 0906-0907, D 0887-0890) early in the school year. This being the case, a concerned principal would have investigated Plaintiff's findings and then appropriately relieved Plaintiff of her directing duties immediately after Plaintiff expressed that principals were directing their own programs in the rest of the county, (**Exhibit 72,** D 0901). But Defendant Riley already knew this information that Plaintiff told her because Riley attended a Reading First meeting for Administrator during the summer of 1998, (**Exhibit 73,** Shirley Cobb's depo. p.31, L11-15). An effective and concerned principal would not wait until the end of the year to rectify the situation. Based on the foregoing, a reasonable jury could conclude Defendant Riley simply is not credible on this issue. This duty could have been given to the assistant principal during the 1998-1999 school year as opposed to waiting until the end of the year, since Cobb attended the Reading First training at same time with Plaintiff, (**Exhibit 74,** Shirley Cobb's depo. p.28, L21-p.29, L2). Plaintiff was told that Shirley Cobb would be responsible for Reading First

the next day immediately following a very tedious School Improvement Report, (Plaintiff's aff.). If Riley was that concerned about Plaintiff's classroom duties, Defendant Riley would not have required Plaintiff to complete this component which took up a tremendous amount of time in order to present the information to the faculty. The fact that most of the faculty had to serve on more than one committee in order to meet the needs of the school, it would have been logical for Defendant Riley to have kept Plaintiff in at least one of the two leadership positions, and Plaintiff contends that the only reason Riley did not was for retaliation for Plaintiff complaining about her and based on Plaintiff's race, since Riley had no problem assigning white teachers to two or more committees. Based on the foregoing facts, a reasonable jury could conclude that Defendant Riley's disparate treatment of Plaintiff with respect to committee assignments was based on race and hostility toward Plaintiff for exercising her right to complain about Riley, and for this reason summary judgment should be denied.

Defendant's MF(22): Shirley Cobb became Chair of the Reading First Program because she is an administrator and at the other schools, administrators acted in that position. (Riley aff., p. 2).

Plaintiff Response to MF(22): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(21) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. Plaintiff's response to MF(22) clearly shows Defendant Riley's articulated nondiscriminatory reason for appointing Shirley Cobb as the new Project Director is not credible. Riley knew from the beginning an administrator should have been in charge of the program, and a reasonable jury could conclude that only reason Riley made the change was because Plaintiff had

complained and others in the State Office might begin to question Riley if Plaintiff continued as Project Director. Therefore, there is a genuine issue of dispute over the material fact as to whether Shirley Cobb was appointed as new Project Director because she was an administrator, and this reason, this Court must deny summary judgment.

Defendant's MF(23): Plaintiff was not replaced as Grade Representative because of her race, but because it was the customary time for those duties to be reassigned. (Riley aff., p. 2).

Plaintiff Response to MF(23): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(22) as though fully set forth herein, and Plaintiff disputes Defendants' allegations in their entirety. For the reasons previously stated, Defendant Riley's legitimate nondiscriminatory reason is a pretext and on this basis, a reasonable jury could conclude Plaintiff was replaced based on her race and in retaliation for having complained about Riley.

Defendant's MF(24): Dr. Riley informed Plaintiff that Plaintiff's goddaughter's teacher had complained about Plaintiff to make sure that Plaintiff understood that the teacher was upset and did not consider her conversation with Plaintiff a good one. (Riley depo., p. 115). Dr. Riley did not have this conversation with Plaintiff because of Plaintiff's race. (Riley aff., p. 3).

Plaintiff Response to MF(24): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(23) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety. Plaintiff was a participant in the conference with Tracey Vickery and has firsthand knowledge of what took place. Defendant Riley is operating solely on

hearsay on hearsay and went no further than Natson for information. Natson himself informed Riley of hearsay and then Natson alleged called Dr. Goodwin and obtained more hearsay. A reasonable jury could conclude that the testimony of both Natson and Riley is simply not credible, because if Natson had received a credible complaint from Tracey Vickery, he would have been obligated to investigate and take action, as the personnel designated by BCSD to receive "questions, concerns or complaints relating to the nondiscrimination policies and practices of the Bulloch County School System, (**Exhibit 75**, 1998-99 school year; **Exhibit 76,** 1999-2000 school year; **Exhibit 77,** 2000-01 school year). A reasonable jury could conclude that Natson did not receive a credible complaint about Plaintiff allegedly harassing Tracey Vickery and that the only reason Natson called Riley was to appease his white secretary's son. Moreover, Defendant Natson testified no one from the School Board contacted him in reference to a harassment complaint being made against the Plaintiff, (**Exhibit 78,** Natson's Depo pg.51,L20). Natson testified that an individual, Jeff Vickery, husband of Tracey Vickery, came to him claiming that his spouse was being harassed, (**Exhibit 78,** Natson's Depo pg.52,L2-22). There is a genuine issue of dispute over whether Defendant Natson and Riley followed proper procedures with respect to Jeff Vickery alleged complaining on behalf of his wife Tracey Vickery. Should Natson have called Riley at all, in light of the fact that the teacher, Tracey Vickery, never contacted him to file a complaint and he never contacted her to find out what really took place and whether Tracey Vickery wanted to file a complaint against Plaintiff? Natson claims he called the Principal, Dr. Joe Goodwin to find out whether or not there was any validity to what he was being told by an upset husband, and that he requested Goodwin to look into it and get back with him, (**Exhibit 78,** Natson's Depo pg.53,L2),

and that Goodwin allegedly called him back and said Tracey Vickery was very, very upset and felt that she had been placed in a situation where she was being harassed by the teacher from Sallie Z, previously cited, (Exhibit 78, Natson's Depo pg.53,L13-18). Assuming Tracey Vickery had a legitimate complaint of harassment against Plaintiff, did Jeff Vickery's complaint to Natson sufficiently invoke the Board Policy GAE on complaints and grievances? If so, did Jeff Vickery's complaint invoke Section 1, the informal process, or Section 2, the formal process? Section 2 of Board Policy GAE defines "Complaint" as "any claim or grievance by a certificated employee of this school district which is filed pursuant to this policy . . ." Jeff Vickery is not a "certificated employee" of BCSD, and there is a genuine issue of dispute on the law on whether he had standing to lodge a complaint on behalf of his wife in the first instance, who was not in any way incapacitated or otherwise prevented from lodging such a complaint, if she had one, on her own behalf. Defendant Natson further testified that his secretary, Billie Vickery, is the mother of Jeff Vickery who is the husband of Tracey Vickery, (**Exhibit 79,** Natson's Depo pg.142,L6-10), and that Billie Vickery has been his secretary since 1988, (Natson's Depo pg.142,L11-14). A reasonable jury could conclude that Tracey Vickery probably complained to her husband, as any wife would about the events of the day, and since she and Dr. Goodwin was in an ongoing controversy with Elizabeth Sanders' complaining about the treatment of her child by Tracey Vickery, Plaintiff's visit in the capacity as the former teacher of the student, a professional courtesy on Plaintiff's part to try and help her goddaughter and former student, the purpose could have been misconstrued regardless of the apparently worthy goal of helping the child. There is a genuine issue of dispute on the material fact over whether Natson was improperly influenced by Jeff Vickery or by Billie Vickery, the mother of Jeff. As it turned out, Sanders

had to take the matter before the Board of Education in the form of a Hardship request to have her child removed from Tracey Vickery's class, (Plaintiff's aff.). No complaints were made that would indicate Plaintiff did not follow proper procedures once she arrived at Mattie Lively, for she went to the office and signed in as any other visitor would, she explained who she was there to see, she received a visitor's pass, and was given directions to Tracey Vickery's classroom, (Plaintiff's aff.). Moreover, there is a genuine issue of dispute over what actually occurred between Plaintiff and Tracey Vickery. Plaintiff has filed a motion for continuance because of the incomplete state of discovery, and the taking of Tracey Vickery, Jeff Vickery, Dr. Goodwin, and anyone else related to this incident should be deposed. Defendants claimed Plaintiff's previous motion to take more than ten depositions would result in cumulative testimony; however, it is clear from Plaintiff's foregoing discussion, that cumulative testimony was a red herring to prevent this Plaintiff and ultimately, this Court, from obtaining the truth. Therefore, for all of the foregoing reasons, summary judgment must be denied.

Defendant's MF(25): Dr. Riley did not tell Plaintiff she needed to do a better job of watching her students because of Plaintiff's race. Rather, Dr. Riley told Plaintiff to do a better job of watching her students for safety reasons. (Riley depo., p. 123; Rile aff., p. 3).

Plaintiff Response to MF(25): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(24) as though fully set forth herein, and on that basis dispute Defendants allegations in their entirety. Additionally, Plaintiff was becoming increasingly concerned about Riley's complaints because Board Policy GBA provides if teacher violates her contract, the violation will be considered insubordination,

(**Exhibit 80**). According to Board Policy expressed in the Teacher Evaluation Manual, insubordination is an unacceptable job related behavior that can provide just cause for further disciplinary actions, (**Exhibit 81**). Had Plaintiff searched the student without reasonable suspicion, Plaintiff would have been in violation of her contract, state and federal laws, and subject to disciplinary action. (**Exhibit 82**, pg.32 Book Bag policy; **Exhibit 83**,pg. 54, due process rights of students requiring reasonable suspicion to search person or book bag). Clearly, a reasonable jury could conclude the student kept the toy gun hidden in classroom and Plaintiff had no basis for reasonable suspicions and was in compliance with Board Policies. A reasonable jury could conclude Defendants' articulated nondiscriminatory reason was a mere pretext to cover Defendant Riley's true purpose to further harass Plaintiff based on her race. There is a genuine issue of dispute on the material fact of whether Defendant Riley investigated the incident properly before verbally reprimanding Plaintiff for not properly supervising her students. For all of the foregoing reasons, summary judgment must be denied.

Defendant's MF(26): Dr. Riley did not transfer Plaintiff to second grade because of Plaintiff's race. Rather, Dr. Riley transferred Plaintiff to second grade as part of an effort to improve the curriculum throughout the grade levels. (Riley aff., p. 4).

Plaintiff Response to MF(26): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(25) as though fully set forth herein, and on this basis Plaintiff disputes Defendants allegations in their entirety. Plaintiff disputes Defendant Riley's articulated nondiscriminatory reason as a pretext. Prior to notifying Plaintiff of the change in grade levels, Riley had not said anything to Plaintiff about a new

teaching strategy or presented any such strategy in writing to her or the faculty, (Plaintiff's aff. ¶ 31). Neither did Riley mention any such reason during the meeting when Riley first informed Plaintiff about the change in grade level from first to second grade, (Plaintiff's aff. ¶ 31). Both Defendants, Riley and Cobb, were orchestrating the meeting with Plaintiff, (Plaintiff's aff. ¶ 31), and neither one of them said anything about a new teaching strategy. If Defendant Riley had such an overall plan to improve the curriculum, it seems Riley would have made sure Plaintiff and all staff involved were properly informed and well in advance to understand expectations of new program and how to implement it, but that never happened, (Plaintiff's aff. ¶ 31)). Riley further should have informed Plaintiff of the upcoming meeting Riley had with the Second Grade teachers, to discuss incoming students, as Plaintiff was teaching at least some of those students in First Grade and could have provided valuable input about her students, (Plaintiff's aff. ¶ 31)). Neither did Riley have a meeting between all first and second grade teachers to determine how Riley's new teaching strategy might work, ((Plaintiff's aff. ¶ 31). Board Policy ICD/ICC provides that, "It is the policy of the Bulloch County Board of Education to allow parents or guardians of any child engaged in a program or project designed to explore or develop new or unproven teaching techniques or other research to inspect any instructional materials utilized in the program, (**Exhibit 84**); such a meeting never took place, (Plaintiff's aff. ¶ 31). Riley never distributed any guidelines or information that would have indicated to Plaintiff or any parent or other teacher that a new teaching strategy was being implemented, (Plaintiff's aff. ¶ 31). Board Policy GBD/GBE/GBC provides that, "The basic consideration in the assignment of professional personnel is the well-being of the program of instruction. The appropriateness of the assignment will have a significant

impact on the morale of the professional staff and the effectiveness of the total educational program," (**Exhibit 85**); Riley failed to abide by Board Policy by not consulting with Plaintiff in advance of making this grade-level change; however, Riley did consult with Janice Wilson, a white teacher, before changing her grade level, (**Exhibit 86,** Wilson's depo. p.31,L16-p.32,L6). Because Riley did not present any type of organized or formalized program about new teaching strategies to the teachers and because Riley did not even inform Plaintiff of the important Second Grade meeting in which Riley and the white teachers made significant decisions about the incoming students, such as distribution of students by race, gender and academics, a reasonable jury could conclude that Riley true reason for moving Plaintiff to the Second Grade was to place Plaintiff in close proximity to Riley's office to enable Riley to carry out her plan of watching Plaintiff's every move and riding her back every time she thought something could be construed negatively. As a result of Riley's change in grade level and secret meeting with white second grade teachers, Plaintiff was given a larger share of the low achieving students with behavior problems than the other teachers, (Plaintiff's aff. ¶ 31). It was obvious to Plaintiff that the goal of the secret meeting between Riley and the other second white teachers was to get rid of the less desirable black students and keep the more desirables white students for themselves. Defendant Riley also sent Plaintiff to EIP training in December of 2000, (a course to teach teachers specific skill needs of academically at-risk students), without consulting Plaintiff in advance to determine the appropriateness of the workshop for Plaintiff and the school (**Exhibit 86**). This arbitrary decision by Riley shows Riley's hidden reason for changing Plaintiff from first to second grade, namely, to make Plaintiff the EIP teacher so the white teachers could dump their low performing academically at-

risk students, majority of whom are black, into Plaintiff's classroom, a reasonable jury could conclude that the plan was put into effect when Riley had her secret meeting with the white second grade teachers and distributed the majority of "at-risk" students to the second grade class designated for Plaintiff. A reasonable jury could further conclude Riley made Plaintiff's grade level change based on race of the students and of Plaintiff. Furthermore, Riley testified during her deposition that her reason for making this change was that they were undergoing vertical alignment of the curriculum for school improvement, (**Exhibit 87 ,** Riley's Depo pg.138,L8-24). The alleged plan, as Riley testified, was to provide an exchange of experience between teachers of one grade level to next consecutive level, to help coordinate the curriculum of the two grade levels, (**Exhibit 87,** Riley's Depo pg.139,L3-11). However, Riley admitted that the alleged program didn't require any daily or weekly meeting between the second-grade and first-grade teachers, or any meetings at all; it was the knowledge of availability that there could be daily contact, (**Exhibit 87,** Riley's Depo pg.139,L18-pg.140,L2) or there could be informal meetings, (**Exhibit 87,** Riley's Depo pg.140,L3-7p. 141), but Riley admitted she did not require any meetings, (**Exhibt 87,** Riley's Depo pg.140,L8-11). There is a genuine issue of dispute on the material fact of whether Riley had any such new teaching strategy to be implemented as the basis for changing Plaintiff from first to second grade level. Because of the lack of structure of this new program, a reasonable jury could conclude it was nonexistent. Plaintiff contends Riley's reasoning is flawed and a pretext, because vertical alignment would only benefit the one group of students taught by the teacher moved, (Plaintiff's aff. ¶ 31). The teachers moved would have no basis for insuring improvement of the instructional process, as they were getting accustomed to teaching a new grade, therefore, vertical alignment would

have little if any effect. (Plaintiff's aff. ¶ 31). Riley did not explain how moving teachers up and down a grade level would coordinate curriculum nor did she detail how the move would improve the instructional process, (Plaintiff's aff. ¶ 31). For example, two teachers were moved from first grade: Susan Banks went down a level and Plaintiff went up a level. If this were being done to improve instruction, the two teachers would have been given a choice as to whether they wanted to go up or down as comfort plays a major role in the instructional process, in accordance with Board Policy GBD/GBE/GBC 1), previously cited, (Exhibit 85). Further, if Riley wanted to implement this new "vertical alignment" teaching strategy, why use your most experienced first grade teacher, Starr Anderson, a white female, who had taught first grade longer than any other teacher at Sallie Z, to ensure maximum exchange of experienced knowledge for the students. Not only did Anderson have the most experience in first grade curriculum, but also, she had the highest ITBS Test Results for 1998-1999 school year, (**Exhibit 88**), which means Anderson would have been a better candidate for Riley to move to second grade to improve instruction if this was in fact the reason. Plaintiff states none of this so-called vertical alignment occurred between her and the second grade teachers, (Plaintiff's aff. ¶ 31). A reasonable jury could conclude that the alleged improvement of instruction by vertical alignment was a mere pretext used by Defendant Riley to hide the fact that she was moving Plaintiff for purposes of harassment and based on her race, and for this reason and all of the foregoing reasons, this Court must deny summary judgment.

Defendant's MF(27): Other white teachers were transferred to teach different grades at the same time Plaintiff was transferred from first to second grade. (Riley aff., pp. 3-4).

Plaintiff Response to MF(27): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(26) as though fully set forth herein. Plaintiff disputes Defendants' allegations in their entirety.

Defendant's MF(28): Dr. Riley did not remove Tara Kirkland, a volunteer, from Plaintiff's classroom because of Plaintiff' s race. Rather, Ms. Kirkland volunteered to work in the school media center. (Riley depo., pp. 232-233; Riley aff., p. 3).

Plaintiff Response to MF(28): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(27) as though fully set forth herein. Plaintiff disputes Defendant MF(28) in its entirety, in that on the particular occasion Defendant Riley came to Plaintiff's classroom and ordered Kirkland to leave and go work in the Media Center, school had not officially started and Kirkland was not a school volunteer, (Plaintiff's aff. ¶ 27). Kirkland came to Sallie Z in her capacity as a personal friend of the Plaintiff, who had called Kirkland the night before and personally requested Kirkland to come and help her during the pre-planning period before school started, (Plaintiff's aff. ¶ 27). During preplanning, Plaintiff and other teachers often had their personal friends or family members to come and help them get their classrooms ready for the new school year, (Plaintiff's aff. ¶ 27). On this occasion, Riley walked up to Plaintiff's classroom staring at Plaintiff working with two other blacks, Wilma Jenkins, the parapro assigned by new Grade Representative Star Anderson, in consultation with Susan Banks and Plaintiff, and Kirkland, (Plaintiff's aff. ¶ 27). Riley asked Plaintiff who the people were in her classroom and Plaintiff reminded Riley that Kirkland was a student who had volunteered through Georgia Southern University the previous school year, (Plaintiff's aff. ¶ 27). Riley then ordered Kirkland to

step outside, out of the hearing of Plaintiff and Jenkins, and after a few minutes, Kirkland returned and began gathering up her things, (Plaintiff's aff. ¶ 27). Plaintiff asked Kirkland where was she going, and Kirkland said Dr. Riley did not want her working here in Plaintiff's classroom but wanted her to go to the Media Center, (Plaintiff's aff. ¶ 27). Plaintiff went to Riley and attempted to explain to her that Kirkland was at the school at Plaintiff's personal request, not as a school volunteer, (Plaintiff's aff. ¶ 27). Riley told Plaintiff in no uncertain terms that Riley thought Kirkland could be better utilized in the Media Center and that was where she wanted Kirkland to be, (Plaintiff's aff. ¶ 27). A jury could reasonably conclude that Riley used her position as the principal to coerce Kirkland into leaving Plaintiff's classroom. Also, on this particular occasion, Riley had no way of knowing that Kirkland was going to be in Plaintiff's classroom, because there was no sign-in requirement during the preplanning period and no sign-in sheet in the office for visitors, (Plaintiff's aff. ¶ 27). Also, based on the way Riley stared at the three blacks, Plaintiff, Wilma Jenkins and Tarra Kirkland, Plaintiff could tell Riley was uncomfortable at the sight of blacks working together in a group, (Plaintiff's aff. ¶ 27). About a week after school officially started, Star Anderson, the Grade Rep, told Plaintiff and the other first-grade teachers that Riley had changed the classroom assignment of the para-pros from what the teachers decided during preplanning to a new arrangement: Riley switched the para-pros around so that all the black teachers had white para-professionals, but all white teachers however did not have black para-pros, (Plaintiff's aff. ¶ 27). For example, Susan Banks' para-pro was Ginny Burgin (white female), (Plaintiff's aff. ¶ 27). Board Policy IFCD states "The Board endorses a Volunteer Program in the schools, subject to suitable guidelines and safeguards," (**Exhibit 89**), and during preplanning, faculty customarily brought their friends or

family to volunteer to help them personally to get their classrooms ready for the new year, (Plaintiff's aff. ¶ 27). There is a genuine issue of dispute on material fact on whether Riley had changed the custom or put in place a volunteer policy for preplanning period, and if so, whether it was distributed to faculty and enforced fairly. A reasonable jury could conclude that Riley was simply acting arbitrary for the purpose of harassing Plaintiff and because Riley had a racial bias against blacks working together in groups, and for this reason, this Court must deny summary judgment.

Defendant's MF(29): Dr. Riley assigned Plaintiff to the Arbor Day/Grounds/Playground, social studies and SACS committees for the 2000-01 school year because Plaintiff failed to sign up for any committees. (Riley depo., pp. 66-67, 152-153; Riley Aff., p. 4).

Plaintiff Response to MF(29): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(28) as though fully set forth herein. Plaintiff disputes Defendants' MF(29) in its entirety. Part of Defendant Riley's duties as principal is to evaluate teachers. BCSD evaluation policy is outlined in the Teachers Evaluation Manual, and relevant Excerpts are attached, previously cited, (**Exhibit 5**). Plaintiff contends that Defendant Riley intentionally assigned Plaintiff to a non-curriculum committee to thwart Plaintiff's professional growth, (Plaintiff's aff.). Board Policy requires tenured teachers, such as Plaintiff, to be evaluated in three major stages: (1) Formal, Formative Stage consisting of three primary components: Improvement, Annual Evaluation, and Improvement; if a teacher receives the rating of Satisfactory, the teacher moves to PDP Stage. (2) PDP Stage consists the same previous three components; if a teacher receives the rating of Satisfactory, the moves to the Special Projects Stage. (3) The Special Projects Stage consists of the same

three components, (**Exhibit 5,** D 0009-0012). At any stage during the evaluation process, the administrator may deem it necessary to move a teacher to Intensive Assistance, (**Exhibit 5,** D 0010). These three stages are known as cycling stages, and a teacher cycle every 3-4 years through each stage, ((**Exhibit 5,** D 0010). Plaintiff had successfully cycled through the first stage under the former principal, Dr. Raith, and according to Plaintiff's BCSD Annual Evaluation Plan, Plaintiff was deemed ready for the PDP Stage at end of 1997-98 school year, (**Exhibit 90**). This information was in the Plaintiff's personnel file, and there is a genuine issue of material fact in dispute on whether Riley even reviewed this information before she appointed Plaintiff as the Project Director for Reading First Program, for Riley knew, or should have known, her appointment was inappropriate for the Plaintiff's PDP Evaluation Stage, previously cited (Exhibit 90). Therefore, Defendant Riley was not doing Plaintiff any special favor when she appointed Plaintiff to the two leadership positions, but rather was clearly exploiting Plaintiff, contrary to Board Policies GBI, previously cited, (Exhibit 13), GAD, previously cited (Exhibit 7), and GBD/GBE/GBC, previously cited (Exhibit 85). A reasonable jury could conclude that Defendant Riley's legitimate nondiscriminatory reason for appointing Plaintiff to only the Ann Arbor\Playground committee is not credible, for Defendant Riley, knew, or should have known, her duties as a principal required her to provide professional opportunities for all teachers, including Plaintiff, and that by appointing Plaintiff to only a low-level committee, Riley knew, or should have known, she was obstructing Plaintiff's professional growth, which in turn would affect Plaintiff's Annual Evaluation and future opportunities in the school system. Additionally, Defendant Riley had announced to the entire faculty at the end of the 1999-2000 school year that she wanted every teacher teaching in the curriculum areas of

reading and math or science, social studies, and health, (Plaintiff's aff. ¶ 33), to select curriculum committees, (Plaintiff's aff. ¶ 33). A reasonable jury could conclude that even if Plaintiff had forgotten to sign up for a curriculum committee, and Plaintiff denies she forgot and asserts she did sign up for curriculum committee, Riley should have put Plaintiff on a curriculum committee since Riley had just moved Plaintiff to teach a new grade level for the first time in Plaintiff's teaching career. Also, a reasonable jury could conclude that Riley was acting in bad faith and with a malicious intent to obstruct Plaintiff's professional growth in retaliation against Plaintiff, because Plaintiff had complained about her since her first year as principal and each succeeding year of her principal ship, and because of Plaintiff's race. White teachers made complaints about Riley and they were not treated like Plaintiff, (Plaintiff's aff. ¶ 33), and Defendant Riley's malicious attitudes can be seen by the fact that Riley appointed many of the white teachers to at least two curriculum committees or substantial committees and some instances, white teachers were appointed to three committees of substances, (Plaintiff's aff. ¶ 33). Defendant Riley appointed the following white teachers to appropriate committees, some on two committees of substance; for example, but not exhaustive: Susan Banks, Reading/Language Arts and Accelerated Reader committees; Lynda Bennett, Reading/Language Art, Reading First and United Way committees; Deanne Page, Math, Reading First, End of Year Celebration committees; Star Anderson, Math and Honors Day-K-2nd committees; Anita Hill, Math and Library/Media committees; Kathy Deloach, Math and Technology committees; Janice Wilson, Science/Health/SS, Accelerated Reader (1st-2nd grades), and Read Across America; Diane Harrell, Science/Health/SS and Library/Media committees; Margaret Klutz, Science/Health/SS and Chair of Honors Day – 3rd-5th

committees. Even the newest teacher, who was also not in the curriculum area, was put on a committee for which she could grow, (**Exhibit 91,** 2000-01 committees list). Plaintiff went to Riley to plea for another committee assignment in addition to Ann Arbor/Playground and Riley said maliciously, "No, that's all I want you to do is plant a tree," (Plaintiff's aff. ¶ 33). After that, Riley never looked at Plaintiff again, (Plaintiff's aff. ¶ 33). Plaintiff walked out of Riley's office, back to her classroom, and cried, (Plaintiff's aff. ¶ 33). Defendant Riley knew, or should have known, all certificated teachers must stay current with what's going on in education, and a school committee is a major way that goal is accomplished, (Plaintiff's aff. ¶ 33). Plaintiff's contends Defendants' articulated legitimate nondiscriminatory reason was a pretext to hide Defendant Riley's continuing racial harassment of the Plaintiff, and the facts further show a reasonable jury could conclude Riley's reason was based on race. For the foregoing reasons, this Court must deny summary judgment.

Defendant's MF(30): There is no evidence that Plaintiff was excluded from any meetings based on her race.

Plaintiff Response to MF(30): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(29) as though fully set forth herein, and on that basis, Plaintiff disputes Defendants' allegations in their entirety.

Defendant's MF(31): Dr. Riley did not remove Plaintiff report cards from Plaintiff's desk in Plaintiff's absence because of Plaintiff's race. Rather, Dr. Riley removed the report cards from Plaintiff's desk to obtain information Dr. Riley needed from the report cards. (Riley depo., pp. 180-182; Riley aff., pp. 4-5).

Plaintiff Response to MF(31): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(30) as though fully set forth herein. Plaintiff disputes the Defendants' allegations that Defendant Riley was not acting based on Plaintiff's race. First, Riley was acting outside her normal routine, (Plaintiff aff. ¶ 41). The e-mail dated September 26, 2000, **(Exhibit 92)** states that Riley needed to re-check the report cards and that Plaintiff's substitute got them together, (Plaintiff aff. ¶ 41). Either Riley's affidavit or the e-mail response is a complete lie or both. After all, Plaintiff's substitute clearly told her Riley had searched Plaintiff's desk, not the substitute, (Plaintiff aff. ¶ 41). The fact is that Riley made no attempt to tell Plaintiff until after Plaintiff spoke with Natson (**Exhibit 93,** Natson's depo. pp.77-79) and after Plaintiff was persistent with getting a response via e-mail raises credibility questions regarding Riley's veracity, (Plaintiff aff. ¶ 41). In addition to this, Riley's credibility is questionable as he testified she does not remember Natson ever addressing the desk search issue, (**Exhibit 94,** Riley depo. p. 181,L2-17). Furthermore, Attendance reports can be checked in the office on forms specified for that purpose and academic achievement is on a separate form, (Plaintiff aff. ¶ 41). Plaintiff further disputes that Riley obtained information on attendance reports or academic achievement because it does not match the e-mail response, (Plaintiff aff. ¶ 41 and **Exhibit 92**). Plaintiff disputes that her desk was not searched based on the fact that Riley's e-mail excuse does not match the signed affidavit, (Riley aff. P. 4). A reasonable jury could conclude that for Riley not to search would mean that Riley knew exactly where the report cards were, as Plaintiff's substitute would not have known where to look in Plaintiff's desk. Also, Riley's e-mail contradicts her affidavit where she states that she got the report cards herself, (Riley aff. P. 4). but she states that Gene Howard got them together for her in the e-mail, previously cited (Exhibit 92). Plaintiff contends

Riley did retrieve the report cards because of Plaintiff's race. Plaintiff and Riley had a negative conference on Sept. 15, 2000 concerning E. Dukes that ended up at Natson's office, (Plaintiff's aff. ¶ 39; (**Exhibit 95,** D0613-0617). Riley was not happy that this resulted in involving the Superintendent of Personnel, Eugene Natson, and she wrote a list of what she considered to be problems with Plaintiff, (**Exhibit 96,** D 0618). Riley did not respect Plaintiff enough to tell her that she'd gotten the report cards until she felt forced to do so. A reasonable jury could conclude that based on the history of Plaintiff and Riley, Riley could have been looking for incriminating information that she thought could be used against the Plaintiff. Furthermore, a reasonable jury could conclude that Riley's articulated nondiscriminatory reason was mere pretext and that Riley retrieved the report cards only as a way to search Plaintiff's desk looking for incriminating information. Based on the foregoing reasons, this Court must deny summary judgment.

Defendant's MF(32): Dr. Riley did not tell Plaintiff that Plaintiff was not allowed to bring a puppy to school without Dr. Riley's permission because of Plaintiff's race. Rather, Dr. Riley informed Plaintiff to obtain her permission prior to bringing an animal on campus because of her preference for this procedure. (Riley aff., p. 5).

Plaintiff Response to MF(32): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(31) as though fully set forth herein. Plaintiff disputes the Defendants' allegations in their entirety. First, BCSD had no policy prohibiting Plaintiff, as a teacher or parent, from bringing her son's pet to school for "Share Day" (**Exhibit 97,** Defendant Natson's Statement to EEOC, p.2). Second, Defendant Riley had not notified the faculty of any such policy prior to the incident of February 2, 2001, (Plaintiff's aff. ¶ 52), (**Exhibit**

98, Riley's depo., pg. 204-205), and Natson confirmed in his EEOC statement that Riley had no such school policy, previously cited Exhibit 97. Since there was no policy on the matter, Plaintiff had no reason to ask the principal for permission, in addition to that already received from classroom teacher, (Plaintiff's aff. ¶ 54). Also, Plaintiff was acting as a parent in this situation; therefore, the Plaintiff followed the procedure that a parent would follow, which is to check with the child's teacher, (Plaintiff's aff. ¶ 54)). The teacher would then go to the principal if she felt further approval is needed, (Plaintiff's aff. ¶ 54). Riley did not inform Plaintiff of her preference, but rather, Riley chastised Plaintiff in the presence of Shirley Cobb, (Plaintiff's aff. ¶ 54). During the meeting of February 6, 2001, Shirley Cobb should have been defending Plaintiff because Plaintiff informed Cobb that the puppy was on the premises and Cobb even kept the puppy for Plaintiff and Cobb testified she had seen other pets and puppies at school, (**Exhibit 99,** Shirley Cobb's depo. pp. 89-99); Plaintiff's aff. ; and **Exhibit 100,** Riley depo., pg. 55-60). Although Janice Wilson now testified she asked Riley for permission to bring her two puppies,(**Exhibit 101,** Wilson depo., pg. 24-30), Plaintiff recall clearly Wilson saying the opposite, (Plaintiff's aff. ¶ 60). Even so, Wilson was not required to do so by any school or Board policy, Exhibit 97, Defendant Natson's Statement to EEOC, p.2). To illustrate the difference in how Defendant Riley treated white teachers and Plaintiff, Tremble was out of her room tending to Reading First when her student teacher was teaching, (Plaintiff's aff. ¶ 60), and Herrington, the white parapro complaining to Riley, (**Exhibit 102,** Herrington's depo. p.34; Plaintiff's aff. ¶ 60). Wilson was in the production room (teachers run copies, check mail boxes, have meetings, etc. in this room) tending to her two puppies when her student teacher was teaching, (Plaintiff's aff. ¶ 60). One must ask, what is the difference between

Tremble and Wilson? The answer is easy. A reasonable jury could conclude that Wilson never complained about Riley to Natson. Based on Natson's EEOC report (Exhibit 97) no one else complained to him. Tremble complained about Riley to Natson, (Plaintiff's aff. ¶ 3; ¶ 39; ¶ 55). Wilson is white and Tremble is black. A reasonable jury could conclude that the basis of Riley's treatment of Plaintiff was race.

With respect to the February 6, 2001 conference, a reasonable jury could conclude Riley was looking for another reason to harass Plaintiff, perhaps, hoping that Plaintiff would do or say something to show insubordination so that she could terminate Plaintiff. Moreover, Riley's notes show Riley had decided that it was going to be her or Tremble, **(Exhibit 103,** Riley's Notes D0650-0651), and a reasonable jury could conclude Riley had formed this intent as early as when she first learned of Plaintiff's initial complaints to Defendant Natson near the end of the 1998-99 school year. And further, a reasonable jury could conclude that based on the disparate treatment Plaintiff received from Riley, as compared to similarly situated white teachers, Riley's intent to fire Plaintiff or to force Plaintiff to leave was based on Plaintiff's race. And further, a reasonable jury could conclude that based on the disparate treatment Plaintiff received from Riley, as compared to similarly situated white teachers, Riley's articulation of nondiscriminatory reasons for disparate treatment of Plaintiff was no more than a mere pretext for Riley's harassing and abusive conduct designed to undermine Plaintiff's confidence as a teacher and to humiliate her in front of her peers, all as part of Riley's tactics to force Plaintiff to leave Sallie Z or be fired. For all of the foregoing reasons, this Court must deny summary judgment.

Defendant's MF(33): Dr. Riley did not force Plaintiff to use

an additional "early pass" because of Plaintiff's race. Rather, Dr. Riley asked Plaintiff to turn in the early pass because Plaintiff left school early. (Riley aff., p. 5).

Plaintiff Response to MF(33): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(32) as though fully set forth herein. Plaintiff disputes Defendants' allegations in Defendant's MF(33). Plaintiff fully complied with the "Early Pass" procedures, (Tremble aff. ¶ 48). Defendant Riley did not notify the faculty of any particular procedures to use other than what is printed on the "Early Pass" itself, (**Exhibit 104;** Tremble aff. ¶ 48), and Plaintiff complied. Defendant Riley wrote on Exhibit 104 that Plaintiff had to turn in an additional early pass since Plaintiff did not get the first early pass pre-approved. A reasonable Jury could conclude that Defendant Riley had no basis for verbally reprimanding Plaintiff because Plaintiff had not violated the "Early Pass" policy. A reasonable jury could also conclude that Defendant Riley seized this opportunity to once again harass Plaintiff, to make her feel uncomfortable and to make Plaintiff feel she was being watched every little thing that Riley thought could be construed as a violation. For the foregoing reasons, this Court must deny summary judgment.

Defendant's MF(34): There is no evidence that Plaintiff was retaliated against under Title VII.

Plaintiff Response to MF(34): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(33) as though fully set forth herein, and on that basis, disputes Defendants allegations in their entirety.

Defendant's MF(35): There is no evidence that Plaintiff was retaliated against under Title Vl.

Plaintiff Response to MF(35): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(34) as though fully set forth herein, and on that basis, disputes Defendants allegations in their entirety.

Defendant's MF(36): There is no evidence that Plaintiff was retaliated against under Title IX.

Plaintiff Response to MF(36): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(35) as though fully set forth herein, and on that basis, disputes Defendants allegations in their entirety.

Defendant's MF(37): Plaintiff did not engage in statutorily protected activity.

Plaintiff Response to MF(37): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(36) as though fully set forth herein, and on that basis, disputes Defendants allegations in their entirety. Plaintiff complained about matters of public concern regarding the racial, gender, and academic imbalance in her classroom and the effects on her students. (Plaintiff's aff. ¶ ¶ 37-40).

Defendant's MF(38): Plaintiff never informed any person employed by BCSD that Plaintiff felt Dr. Riley's actions toward her were race-based.

Plaintiff Response to MF(38): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(37) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety.

Defendant's MF(39): There is no evidence that any of he

Defendants were on notice by Plaintiff of Defendant Riley's alleged racial discrimination of Plaintiff.

Plaintiff's Response to MF(39): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(38) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety.

Dendant's MF(40): Plaintiff suffered no adverse employment action throughout her tenure at Sallie Z.

Plaintiff Response to MF(40): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(39) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety.

Defendant's MF(41): There is no nexus between Plaintiff' s alleged complaints to Mr. Natson and any subsequent allege discrimination.

Plaintiff Response to MF(41): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(40) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety.

Defendant's MF(42): Plaintiff cannot prove that any legitimate, nondiscriminatory reason Defendants have articulated or their actions is pretext for discrimination.

Plaintiff Response to MF(42): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(41) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety.

Defendants' MF(43): There is no evidence of a deprivation

of Plaintiff's constitutional rights under color of state law.

Plaintiff Response to MF(43): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(42) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety. To reiterate, under O.C.G.A. 20-985.2 BCSD is required to provide a fair and effective complaints and grievance policy and procedures. They did not do so, and because Defendant Batten refused to let Plaintiff bring her grievances before the school board, Plaintiff was denied access to the State remedy through the Georgia Board of Education and through state courts, because no hearing had by the Bulloch County Board of Education. (**Exhibit 54,** Board Policy "GAE", p.6).

Defendant's MF(44): Any actions taken by the individual Defendants were performed within their discretionary authority.

Plaintiff Response to MF(44): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(43) as though fully set forth herein, and on this basis disputes Defendants' allegations in their entirety. Additionally, discretionary authority does not protect official who violate established constitutional rights, as the Plaintiff's due process rights. See generally, Harlow v. Fitzgerald, 457 U.S. 800, 102 (1982).

Defendant's MF(45): Defendants did not violate clearly established law.

Plaintiff Response to MF(45): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(44) as though fully set forth herein, and on this basis, Plaintiff disputes Defendants' allegations in their entirety. Additionally, discretionary authority does not protect official who violate established constitutional rights, as the Plaintiff's due process

rights. See generally, Harlow v. Fitzgerald, 457 U.S. 800, 102 (1982).

Defendant's MF(46): Plaintiff is claiming that she was retaliated against in violation of Title IX when she complained to Defendants about alleged discriminatory assignments of students to classes a Sallie Z on the basis of sex.

Plaintiff Response to MF(46): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(45) as though fully set forth herein, in support of her disputation of Defendants' MF(46) in its entirety. Additionally, facts show Plaintiff is complaining of discriminatory acts against Plaintiff in her employment, and it is the repeated nature of the Defendants' conduct that constitute the unlawful employment practice based on race. See generally, National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061(2002). Plaintiff contends the handling of the E. Dukes matter was done based on Plaintiff's race. When a white teacher had a similar problem, the black student was not removed from his class. (Harrell Depo. pp. 94-96). The Court is referred to Plaintiff's Affidavit ¶ ¶ 34-40.

Defendant's MF(47): There is no evidence that Defendants engaged in intentional, purposeful or reckless conduct that was extreme and outrageous.

Plaintiff Response to MF(47): Plaintiff incorporates Plaintiff's responses to Defendants MF(1)-MF(46) as though fully set forth herein, and on this basis, Plaintiff disputes Defendants' allegations in their entirety, for it was the repeated nature of Defendants' conduct that led to Plaintiff's complete mental breakdown and aggravation of preexisting medical conditions. By the time Defendants got through

harassing, abusing, and ignoring Plaintiff's pleas for help, Plaintiff was suffering severe anxiety stress with depressive episodes, including but not limited to: (**Exhibit 105,** Dr. Reddy's Certificates to Return to Work; Dr. Reddy Referral to Dr. Adams, Licensed Psychologist; Letters dated March 12, 2001, April 23, 2001, and July 31, 2001 from Dr. Adams to Dr. Reddy with copies to Defendant Natson). Moreover, the Teachers Retirement System had their Medical Board to investigate Plaintiff's disability claim and they unanimously concurred in Dr. Adams' mental health assessment of Plaintiff's condition as been job related. (**Exhibit 61,** Teachers Retirement System Letter to Mrs. Brenda E. Tremble dated September 21, 2001 and three opinions from TRS Medical Board).

Respectfully submitted,
s/Sandra Jackson Sheppard
Attorney for Plaintiff

EXHIBIT 097

From approximately mid August to mid October 2000, I met with Brenda Tremble and Dr. Brenda Riley individually at least one time. Additionally, I met with both Riley and Tremble at least once in my office during the same time period. Both had individually approached me to express concern about the other. Specifically, each voiced concern about the difficult strained relationship that existed between the two. Tremble complained that Riley was rigid and inflexible in her leadership and that she came across as uncaring about her as a staff member. Riley complained that Tremble was not a team player, difficult to get along with, and not carrying her share of the load. When I met with the two of them, each were given the opportunity to vent and get to understand where the other was coming from with respect to why each felt the way they did. Each departed stating they felt they had a greater understanding of each other.

Approximately late January 2001 to early February 2001, Brenda Tremble and Brenda Riley approached me again indicating that the two of them had another confrontation over Brenda Tremble allowing her child (a student at Sallie Zetterower) to bring a puppy to school for show and tell time. Tremble said she had permission from Assistant Principal Shirley Cobb. Riley said that Cobb denied giving her permission. Dr. Riley inquired as to whether the BOE had a policy prohibiting the bringing of pets to school. I replied no. She then asked if she was prohibited from forbidding the practice at her school. I replied there was no such prohibition. She informed me that she would prohibit the practice at her school for all staff members from this point forward. Brenda Tremble requested FMLA around mid February 2001 and was granted FMLA for the balance of the school term. On May 23, 2001, Dr. Riley notified myself and Superintendent

Dr. Lynn Batten that she would not be returning for the 2001-2002 school term.

Around early October 1998, after the September paychecks were issued to all employees, Brenda Tremble called the office seeking to speak to me. I was not available at the time she called so she scheduled an appointment to come see me. When Brenda Trembles visited me, she-elicited my support in getting her stipend, which she stated she should have received in her September check. The stipend was compensation for work done over the course of the previous school term (1997-1998) with Sally Zetterower's Reading First program. I contacted the payroll/accounting department inquiring as to why she did not receive the stipend and was informed that the appropriately signed paperwork from the Sallie Zetterower Principal had not been received. I then determined, since I was not familiar with the Reading First Program and its requirements, to refer her to Dianne Bath for her assistance in helping Brenda Tremble to receive her stipend. Before departing, Brenda Tremble shared with me that she was disappointed that despite all of her hard work and time spent working with the Reading First Program the previous year, the new Principal (Dr. Brenda Riley) had not completed the paperwork necessary for her to receive her stipend. She also stated that she was upset because Dr. Riley had chosen to appoint another teacher for the 98-99 school term to handle the responsibilities. She stated that she understood that the Principal had the authority to re-assign the responsibilities, but felt she should have been afforded the courtesy of at least having the situation discussed with her prior to making the change.

Over the course of the following 99-00 school term, Brenda Tremble on at least one occasion shared with me that she felt the Principal, Brenda Riley was causing alarm among the Faculty and Staff at the school because of her harsh and rigid

leadership style. She told me that several other teachers would be approaching me to share the same concern. I never heard from any other staff member over the duration of the 99-00 school term or the 00-01 term, which was Dr. Riley's last year employed by the Bulloch County school system.

s/Eugene Natson, Jr.
Assistant Superintendent For Personnel

Supreme Court, U.S.
FILED
AUG 18 2005
OFFICE OF THE CLERK

No. 05-104

IN THE

Supreme Court of the United States

BRENDA E. TREMBLE,

Petitioner,

v.

BULLOCH COUNTY SCHOOL DISTRICT; LYNN BATTEN, EUGENE NATSON, JR., SHIRLEY COBB, and BRENDA SHUMAN-RILEY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner's list of Parties is erroneous in that it names Bulloch County as a Respondent. Bulloch County is not and never has been a party to this lawsuit. The remainder of Petitioner's statement of parties is correct.

STATEMENT OF THE CASE

Petitioner Brenda E. Tremble ("Petitioner") sued Respondents for allegations arising from her employment with the Bulloch County School District ("BCSD"). Petitioner began teaching at Sallie Zetterower Elementary School ("Sallie Z") in 1994. At all times relevant to this lawsuit, Respondent Shirley Cobb ("Shirley Cobb") was Assistant Principal at Sallie Z, Respondent Eugene Natson, Jr. ("Mr. Natson") was Assistant Superintendent for Personnel, and Respondent Lynn Batten ("Dr. Batten") was Superintendent. Respondent Brenda Shuman-Riley ("Dr. Riley") became Principal of Sallie Z in the 1998-99 school year.

The United States District Court, Southern District of Georgia ("District Court") granted Defendants' Motion for Summary Judgment, stating that Petitioner's case "came close" to having crossed the "Rule 11 line." Pet. App. p. 27-28. "Much of what plaintiff has filed here has no reasonable *factual or legal* basis. . . ."(*Emphasis in original*). *Id.* "Typically, only *facially unsupported* claims rate Rule 11 sanctions, though that's not to say that those who pile on dense underbrush to obscure frivolous claims should escape the rule's wrath. *See Roberts v. United Paper Workers*, 401 CV257, doc. 52 at 15 (S.D. Ga. 11/25/02) (reminding race-discrimination plaintiff that sheer bulk will not insulate

against Rule-11 violating filings)." (*Emphasis in original). Id.* "Exercising (generously at that) its discretion, the Court determines that Tremble just barely skates away from the Rule 11 hole in her ice." *Id.*

The Eleventh Circuit United States Court of Appeals affirmed the grant of summary judgment and issued sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure against Petitioner for frivolously appealing the District Court's ruling on Petitioner's due process claim. Pet. App. pp. 2-4.

SUMMARY OF THE ARGUMENT

Petitioner has appealed the Eleventh Circuit's affirmation of the District Court's grant of Respondents' Motion for Summary Judgment on two claims and has appealed the award of sanctions by the Eleventh Circuit.

Petitioner bases each argument on a United States Supreme Court case. None of the cases have any applicability to the issues presented. First, Petitioner contends that the District Court erred in not applying *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002) in its summary judgment review of Petitioner's hostile work environment claim. Pet. p. 21. *Morgan* is a statute of limitations case that has no applicability to Petitioner's case, as Respondents have never raised a statute of limitations defense and there is no evidence that the District Court and the Eleventh Circuit did not look at all allegations propounded by Petitioner, regardless of the time frame, in deciding that she failed to survive summary judgment. Second, Petitioner contends that the District Court erred in not applying *Board of Regents v. Roth*, 408 U.S.

564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) in its summary judgment review of Petitioner's Fourteenth Amendment procedural due process claim. Pet. p. 23. *Roth* addresses whether the plaintiff had a property interest sufficient to give rise to a protectible interest, not whether state actors thwarted plaintiff's administrative and State-court remedies. Respondents have never contended that Petitioner does not have a protectible property interest in her job. The District Court granted summary judgment on Petitioner's failure to show that state actors thwarted Petitioner's administrative and State-court remedies. The Eleventh Circuit affirmed. The evidence shows without dispute that Petitioner failed to avail herself of the administrative remedies available through the school district.

The Eleventh Circuit properly affirmed the District Court's grant of summary judgment on Petitioner's claims of a racially hostile work environment and a due process violation, as well as all of her other federal claims.

Furthermore, the Eleventh Circuit properly granted sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure against Petitioner on her due process appeal where she failed to show that she availed herself of available administrative remedies and failed to show that state actors thwarted her administrative and State-court remedies. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990), cited by Petitioner, describes only one of the many instances where sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure may be appropriate. Where an appellant fails to show that her claim is factually or legally cognizable, sanctions are also appropriate. *Moore v. Time, Inc.*, 180 F.3d 463 (2d Cir. 1999) (per curiam), *cert. denied*, 528 U.S. 932, 120 S. Ct. 331, 145 L. Ed. 2d 258 (1999).

REASONS FOR DENYING THE PETITION

I. The Eleventh Circuit Court's opinion is not contrary to *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002).

A. Statement of Facts

Petitioner's attempt to illustrate a racially hostile work environment only amounts to the following allegations, as paraphrased from her Petition:

1. Petitioner worked for the BCSD from 1994 through February, 2001. Pet. pp. 1-2.

2. Petitioner met with Mr. Natson to "discuss her questions, concerns or complaints about her principal." Pet. p. 2.

3. Petitioner was appointed Grade Representative by Dr. Riley. Pet. p. 2.

4. Petitioner was appointed Reading First Project Chair by Dr. Riley. Pet. p. 3.

5. Petitioner was unable to meet with the state monitor for the Reading First Program because she was on recess duty when the monitor came to her classroom. Pet. pp. 3-4.

6. After Petitioner visited her goddaughter's teacher, Ms. Vickery, at another school, Dr. Riley told Petitioner of Ms. Vickery's husband's complaint to the school district about Petitioner's conduct. Pet. p. 4.

7. Dr. Riley told Petitioner that she needed to do a better job of eyeballing her students after one of them brought a real-looking toy gun to school but did not make a similar comment to the white paraprofessional on recess duty. Pet. p. 4.

8. Petitioner had to work hard to prepare a report on the Reading First program. Pet. pp. 4-5.

9. Petitioner met with Mr. Natson and "did *not* use the specific words to Natson that she felt she was being mistreated because of her race . . ." Pet. p. 5.

10. When Petitioner and Dr. Riley discussed Petitioner's complaints, Dr. Riley allegedly told Petitioner, "I can be warm and friendly with my family at home. I don't have to be warm and friendly with you at school." Pet. p. 5.

11. Dr. Riley allegedly told Petitioner at the beginning of the 1999/2000 school year, "You understand that we are sharing the para-pros." Dr. Riley removed Petitioner's personal friend, Tara Kirkland, from volunteering in her classroom. Dr. Riley paired black teachers with white paraprofessionals. Pet. pp. 5-6.

12. Dr. Riley did not lavish Petitioner with praise in a faculty meeting for being the only black teacher to have earned her master's degree. Mr. Natson allegedly remarked to Petitioner that Dr. Riley was not going to respect *him* as her black administrator. Pet. p. 6.

13. Dr. Riley investigated Petitioner's paraprofessional's complaint that she did not know whether she was doing her job correctly and reported this investigation to Mr. Natson, Assistant Superintendent of Personnel. Pet. pp. 6-7.

14. Dr. Riley "chastised" Petitioner because Petitioner told a parent that Dr. Riley "monitors the lunchroom." Pet. p. 7.

15. Petitioner was moved from teaching first grade to second grade for the 2000/2001 school year. Petitioner admits that white teachers were also moved to a new grade level. Pet. pp. 7-8.

16. Petitioner alleged Dr. Riley attempted to designate her as the EIP teacher, but offers no evidence that she was ever so designated. Petitioner requested a transfer to another school, was given the opportunity to transfer, and declined to accept the opportunity offered. Pet. pp. 8-9.

17. Petitioner was only assigned one committee duty for the 2000/2001 school year. Pet. p. 9.

18. Petitioner's 2000/2001 class was not academically balanced with regard to high-achieving and low-achieving students. Pet. p. 9.

19. A fifth grade student designated to pick up attendance reports frequently failed to pick up Petitioner's attendance reports. Pet. p. 10.

20. Dr. Riley wrote a note to Petitioner stating that Petitioner needed to have reading levels in her students' Accelerated Reading folders before sending them to the library. Dr. Riley allegedly told Petitioner that she has staff designated to tell her things. Pet. p. 10.

21. Dr. Riley allegedly told Petitioner, "I want you to make sure E. [a white female student in Petitioner's class] is happy." Pet. p. 11.

22. Respondents can discern no complaint in the paragraph numbered "22" in Petitioner's Brief. Pet. p. 12.

23. A black child repeating second grade was placed in Petitioner's class allegedly because other teachers thought that he would benefit more by having a black teacher. Pet. p. 12.

24. Dr. Riley retrieved Petitioner's report cards from her desk in Petitioner's absence. Pet. p. 12.

25. Petitioner told Mr. Natson that she was afraid Dr. Riley was "planting drugs or something in her desk." Thereafter, Dr. Riley never spoke to Petitioner without a witness present. Pet. p. 13.

26. When Petitioner's class, due to attrition, had only one white female remaining, Dr. Riley moved the child to another classroom. Pet. p. 13.

27. Dr. Riley required Petitioner to turn in an additional "early pass" when she left school early without prior authorization.[1] Pet. pp. 13-14.

28. Respondents can discern no complaint in the paragraph numbered "28" in Petitioner's Brief. Pet. p. 14.

29. Petitioner alleges she "was told" that Ms. Deloach, a white teacher, came down hard on Dr. Riley about her class profile.[2] Pet. p. 14.

30. Respondents can discern no complaint in the paragraph numbered "30" in Petitioner's Brief. Pet. pp. 14-15.

31. Dr. Riley told Petitioner, "You are not to bring a dog to school without asking me first." Pet. pp. 15-16.

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1. Anita Hill, a white teacher, turned in an additional early pass voluntarily without being instructed to do so by Dr. Riley. Pet. p. 14. Petitioner contends that this infers that race was a factor in Dr. Riley's decision-making process. To the contrary, this shows that Ms. Hill followed the rules and Petitioner did not until instructed to do so by Dr. Riley.

2. Petitioner has no evidence of this assertion as Ms. Deloach denied this allegation in her deposition. Pet. p. 14. Petitioner repeatedly asserts that Respondents and/or Respondents' attorneys coached witnesses. She has no evidence of such and is violating Rule 24(6) of the United States Supreme Court Rules and basic rules of attorney conduct in making such unsupported allegations.

32. Respondents can discern no complaint in the paragraph numbered "32" in Petitioner's Brief. Pet. pp. 16-17.

33. Respondents can discern no complaint in the paragraph numbered "33" in Petitioner's Brief. Pet. p. 17.

34. Neither Ms. Cobb nor Dr. Riley spoke to Petitioner between February 7-9, 2001. Pet. p. 17.

35. Ms. Wilson, a white teacher, brought two puppies to school for share day.[3] Pet. pp. 17-18.

36. Ms. Herrington, Petitioner's white paraprofessional, complained to Dr. Riley about Petitioner. Pet. p. 18.

37. Dr. Batten told Petitioner's husband that he was unaware of Petitioner's problems with Dr. Riley. Pet. p. 18.

38. Respondents can discern no complaint about Respondents in the paragraph numbered "38" in Petitioner's Brief. Pet. p. 18.

39. Petitioner never observed Dr. Riley disrespect white teachers. Pet. p. 19.

40. Petitioner filed her grievance on September 25, 2001. Pet. p. 19.

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3. Ms. Wilson testified that she had permission from Dr. Riley, had a full-time student teacher in her classroom, and kept the puppies in her presence all day. (Doc 105 – Pg 25-27).

41. Respondents can discern no complaint in the paragraph numbered "41" in Petitioner's Brief. Pet. p. 19.

As noted by the District Court, "Tremble forgets that she, like every other employee, must absorb quite a few managerial thumps before making 'a federal case' out of any claimed adverse personnel actions. *Brown v. Sybase, Inc.*, 287 F. Supp. 2d 1330, 1334 (S.D. Fla. 2003)". Pet. App. p. 23. Petitioner simply and completely fails to point to any evidence of racial harassment or discrimination to support a claim of a racially hostile work environment.

B. Argument And Citation Of Authorities

To state a threshold claim for a racially hostile work environment, Petitioner must show three things. First, Petitioner must show that her "workplace is permeated with intimidation, ridicule and insult, that is sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S. Ct. 367; 126 L. Ed. 2d 295 (1993). Second, Petitioner must show that the hostile conduct was aimed at her. Third, Petitioner must show that she was the target of this conduct ***because of her race***. *Jones v. Barnhart*, 349 F.3d 1260, 1268 (10th Cir. 2003); *Sullivan v. Newburgh Enlarged Sch. Dist.*, 281 F. Supp. 2d 689, 703-704 (S.D.N.Y. 2003). (*Emphasis added*) As the District Court pointed out, the burden of proof is somewhat demanding because it is too easy to mischaracterize as racism a supervisor's stern criticisms or abrasively imperious manner. *Howard v. Bd. of Educ.*, 70 Fed. Appx. 272, 281 (6th Cir. 2003). Pet. App. p. 16.

As shown in the statement of facts above, Petitioner has no proof of a work environment permeated with racial hostility. First, she fails to show any evidence of racial hostility. Petitioner is unable to even point to one incident of racial animus despite a 19-page factual statement including 41 alleged incidents of alleged maltreatment. Petitioner's argument that the District Court did not correctly apply *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002), is not clear. What is clear is that *Morgan* merely holds that a hostile work environment claim should be reviewed in its entirety even if some of the events alleged fall outside the statute of limitations, so long as one of the events comprising it fell within the statute of limitations. *Shields v. Fort James Corp.*, 305 F.3d 1280, 1281-1282 (11th Cir. 2002). Respondents have not raised a statute of limitations bar on any of Petitioner's claims. Furthermore, there is no indication that the District Court or the Eleventh Circuit failed to consider all of her allegations.

Viewed in its entirety, Petitioner's hostile work environment claim fails. To support a hostile environment claim, an employee can demonstrate either a single incident of extraordinarily severe discrimination or a series of incidents sufficiently continuous and concerted to alter the conditions of the work environment; but the employee's evidence must objectively demonstrate a hostile environment. *Sullivan*, *supra*. An employee's subjective belief is insufficient; the proper question is whether a reasonable person could find that her evidence demonstrates a hostile environment. Here, Petitioner repeatedly contends that Dr. Riley "harassed" her, yet she fails to point to any racial animus or racial component of the alleged harassment. Petitioner's complaints amount to nothing more than

dissatisfaction with Dr. Riley's managerial style, not racial harassment. Petitioner has failed to show even isolated incidents of discrimination, much less an environment "permeated with *discriminatory* intimidation, ridicule and insult." *Id.* (*Emphasis added*).

None of Petitioner's allegations individually or as a whole amount to grievously offensive conduct. The only thing Petitioner has shown is that she felt she worked in a generalized atmosphere of unpleasantness. This is simply not enough to objectively illustrate a racially hostile work environment. Thus, Petitioner's claim fails and her petition should be dismissed.

II. The Eleventh Circuit Court's opinion is not contrary to *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

A. Statement of Facts

Petitioner claims that Respondents violated her Fourteenth Amendment rights by failing to consider her grievance. Pursuant to Section 5 of Board Policy GAE, a "complaint shall be presented in writing . . . ***within ten (10) calendar days after the most recent incident upon which the complaint is based***." Resp. App. p. 5a. (*Emphasis added*). Unbelievably, Petitioner filed in this court an altered copy of Board Policy GAE that omits the 10-day deadline within which petitioner should have filed her grievance to avail herself of the procedure available to her. Pet. App. pp. 31-32. The incomplete copy in Petitioner's Appendix is not a mirror image of the Exhibit tendered in the District Court to which Petitioner cites as her source. A true, correct and complete copy of Board Policy GAE, as admitted in the

District Court as R-6-111-Ex 51, is attached as Respondents' Appendix.

Petitioner admits that the School District did not receive a written complaint from her until September 25, 2001 (Pet. p. 19, par. 40), over ***six months*** after the last "incident" alleged by Petitioner occurred in February, 2001 (Pet. pp. 14-18, paras. 30-38).

Petitioner's failure to follow the procedure clearly outlined in the Board Policy is an error of her own making, not a deprivation of her rights by others.

B. Argument And Citation Of Authorities

"To state a section 1983 claim, the petitioner must allege that a person, while acting under color of state law, deprived him of a federal or constitutional right." *Merritt v. Brantley*, 936 F. Supp. 988, 991 (S.D. Ga. 1996), *citing Edwards v. Wallace Community College*, 49 F.3d 1517, 1522 (11th Cir. 1995).

Petitioner alleges that the Eleventh Circuit erred in "not applying" *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, the United States Supreme Court held that the plaintiff did not have a property interest sufficient to require University authorities to give him a hearing when they declined to renew his contract of employment. *Id.* at 578. Thus, the Court held that there could be no Fourteenth Amendment protection. *Id.* at 579. Since the *Roth* Court held that there was no protectible property interest at stake, it did not have to reach whether or not there was a due process violation under the Fourteenth Amendment. *Id.* at 578. Respondents have never argued, and the lower courts have

not found, that Petitioner does not have a protectible property interest. Thus, *Roth*, *supra*, is not applicable to this case.

Petitioner had adequate administrative and State remedies, of which she failed to timely avail herself. *See Merritt v. Brantley*, 936 F. Supp. 988, 991 (S.D. Ga. 1996); *McKinney v. Pate*, 20 F.3d 1550, 1564-65 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110 (1995). As correctly held by the District Court, Petitioner's procedural due process claim under section 1983 fails "because she failed to show that State actors thwarted both her administrative and State-court remedies." *Merritt v. Brantley*, 936 F. Supp. at 991. A violation of a procedural due process right is not shown "unless and until the State fails to provide due process." *Id.* at 991, *quoting Zinermon v. Burch*, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).

In *McKinney v. Pate*, 20 F.3d 1550, 1564-65 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110, 115 S. Ct. 898, 130 L. Ed. 2d 783 (1995), the Court held that, even if a county building inspector holding a protectible interest was fired without a proper hearing, he at most raised a procedural due process violation which ultimately failed because of the availability of adequate state remedies that he failed to exploit. "McKinney [thus] failed to take advantage of any state remedies, opting instead to pursue his claim in federal court." *Id.* at 1563. *See also Horton v. Bd. of Co. Comm'rs*, 202 F. 3d 1297 (11th Cir. 2000) ("*McKinney* is based on a recognition that the process a state provides is not only that employed by the board, agency, or other governmental entity whose action is in question, but also includes the remedial process state courts would provide if asked.")

Even assuming that Petitioner held a property interest in continued employment as a Sallie Z elementary school teacher, her own allegations show an adequate administrative remedy. Petitioner does not deny the existence of Bulloch County School District Policy GAE, enacted in accordance with O.C.G.A. § 20-2-989.5. Given the existence of an adequate remedy, Petitioner must show that state actors thwarted this administrative remedy and other State-court remedies. *Zinermon, supra.* Petitioner has failed to present any evidence of this essential element; thus, her due process claim fails.

For the foregoing reasons, Petitioner has failed to show that the Eleventh Circuit erred in holding that Petitioner did not have a Fourteenth Amendment Procedural Due Process Claim.

III. The Eleventh Circuit appropriately issued frivolous appeal sanctions against Petitioner.

In fact, Petitioner has failed to show that her appeal of this issue to the Eleventh Circuit was not frivolous. An adequate administrative remedy existed in the form of a grievance procedure pursuant to Board Policy GAE. Resp. App. p. 5a. Petitioner failed to timely avail herself of this process. Pet. p. 19. Thus, Petitioner cannot state a claim for a Fourteenth Amendment due process violation. A circuit court may award sanctions under Rule 38 of the Federal Rules of Appellate Procedure even if the district court did not find that sanctions were warranted under Rule 11 of the Federal Rules of Civil Procedure. *Freeze v. Griffith*, 849 F.2d 172, 176 (5th Cir. 1998). Here, the Petitioner was warned by the District Court how perilously close she came to a Rule 11 violation. Pet. App. pp. 27-28. She ignored that warning and was properly sanctioned by the Eleventh Circuit.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be DENIED.

Respectfully submitted,

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APPENDIX

APPENDIX — BOARD POLICY, COMPLAINTS AND GRIEVANCES OF THE BULLOCH COUNTY BOARD OF EDUCATION DATED FEBRUARY 16, 1998

BOARD POLICY **Descriptive Code: GAE**

COMPLAINTS AND GRIEVANCES **Date: 2/16/98**

SECTION 1. PURPOSE; INFORMAL RESOLUTION PREFERRED. It is the purpose of this policy to implement the provisions of the Act of the General Assembly of 1992, O.C.G.A. 20-2-989.5 et seq. In accordance with the foregoing, it is the policy of the Board of Education that certified personnel shall have the right to present and resolve complaints relating to certain matters affecting the employment relationship at the lowest organizational level possible. The Board of Education encourages all employees to resolve their complaints informally in a spirit of collegiality where possible. This policy and procedure is available where such efforts do not succeed, or where, for any other reason, the certificated employee desires to pursue this procedure.

SECTION 2. DEFINITIONS.

a. "Level One Administrator" means the principal of a school with respect to teachers and other certificated personnel assigned to that school. With respect to the certified Administrators supervised by the Superintendent, the "Level One Administrator" shall be the Superintendent. In any case not covered by this paragraph, the "Level One Administrator" shall be the supervisory certificated person designated by the Board or in the absence thereof, by the Superintendent.

b. "Central office administrator" means the local school system Superintendent.

c. "Complaint" means any claim or grievance by a certificated employee of this school district which is filed pursuant to this policy and which comes within the scope of the policy.

d. "Notification" means delivery in person to the party entitled to notification, or deposit in the United States Mail, certified mail, return receipt requested, to the last known address of the party notified.

SECTION 3. SCOPE OF COMPLAINT; EXCLUSIONS.

a. *Scope*. Unless excluded by paragraph (b) hereof, this complaint and grievance procedure is applicable to any claim by any professional employee certificated by the Professional Standards Commission who is affected in his or her employment relationship by an alleged violation, misinterpretation, or misapplication of statutes, policies, rules, regulations, or written agreements of this school district or with which the district is required to comply.

b. *Exclusions*. Thus procedure shall not apply to:

(1) Performance ratings contained in personnel evaluation and professional development plans pursuant to Code Section 20-2-210;

(2) Job performance;

(3) Termination, non-renewal, demotion, suspension, or reprimand of any employee, as set forth in Code Section 20-2-940;

(4) The revocation, suspension, or denial of certificates of any employee, as set forth in Code Section 20-2-790;

c. A certified employee who chooses to appeal under Code Section 20-2-1160, shall be barred from pursuing the same complaint under this policy.

SECTION 4. HEARING RIGHTS; EVIDENCE; REPRESENTATION; DECISIONS; RECORDS.

a. *Hearing; Evidence.* The complaint shall be entitled to an opportunity to be heard, to present relevant evidence, and to examine witnesses at each level, but the complainant may not present additional evidence at the Second or Third Hearing levels unless notice of the Complainant's intention and the evidence to be presented are submitted in writing five (5) days prior to the hearing to the Administrator who will preside at such level, and in the case of the local board, to the Superintendent. When hearing an appeal from a prior level, the local Board of Education shall hear and decide all appeals de novo.

b. *Representation.* The Complainant and the administrator against whom the complaint is filed or whose decision is appealed shall be entitled to the presence of an individual, including an attorney to assist in the

presentation of the complaint and the response thereto, at the Central Office Administrator and at the local Board of Education level. The presence of any individual other than the Complainant and the Administrator at Level One is prohibited, except witnesses who present testimony or documents.

c. *Hearing Officer.* The local Board of Education may appoint a member of the state Bar to serve as law officer who shall rule on all issues of law and other objections, but such attorney shall not assist in the presentation of the case for either party.

d. *Overall Hearing Time Schedule.* The overall time frame from the initiation of the complaint until rendition of the decision by the local board and notification thereof to the Complainant shall not exceed sixty (60) days.

e. *Automatic Referral To Next Level.* Any complaint not processed by the administrator or the local unit of administration within the time frame required by this policy shall be forwarded to the next level for determination.

f. *Records.* Accurate records of the proceedings at each level shall be kept; the proceedings shall be recorded by mechanical means; all evidence shall be preserved and made available to the parties at all times; and all costs and fees shall be borne by the party incurring them unless otherwise agreed upon by the parties; except that the cost of preparing and preserving the record of the proceedings shall be borne by the local Board of Education; provided however, the cost of transcribing the transcript of

evidence and proceedings before the local Board shall be paid by the party requesting same, and all costs of the record on appeal to the superior courts and appellate courts shall be paid by the party required to do so by the laws relating thereto.

g. *Decisions.* Each decision shall be made in writing and dated, and shall contain findings of fact and reasons for the particular decision reached.

h. *Notice.* The decision at each level shall be delivered to the Complainant by a person designated by the Superintendent, either (1) being hand delivered or (2) being deposited in the U. S. Mail (certified mail, return receipt requested). Notice to the Complainant shall be deemed to have been made on the date of hand delivery or on the date of deposit in the U.S. Mail by certified mail, return receipt requested to the address stated in the complaint or, if not contained in the complaint, to the last known address of the Complainant on file with the Board of Education.

SECTION 5. FIRST LEVEL; PRESENTATION; TIME; CONTENTS. The complaint shall be presented in writing to the Level One Administrator within ten (10) calendar days after the most recent incident upon which the complaint is based. The complaint shall include the following:

a. The mailing address of the Complainant to which all notices and other documents may be mailed;

b. The intent of the Complainant to utilize this complaint procedure, clearly stated;

c. A reference or description of the statute, policy, rule, contract provision or regulation that is alleged to have been violated, misinterpreted or misapplied;

d. A brief statement of the facts reasonably calculated to show how such statute, policy, rule or regulation was violated or misapplied, and how it substantially affects the employment relationship of the Complainant; and

e. A statement of the relief desired.

The Superintendent shall prepare forms for use in accordance with the foregoing requirements.

SECTION 6. FIRST LEVEL HEARING AND DECISION. The Level One Administrator shall record the date of filing on the complaint, and shall give notice to the Complainant of the time and place of the hearing, either by mail or hand delivery. When notice is given by mail, it shall be sent by first class mail to the address set forth in the complaint. If no address was included in the complaint, then the notice shall be sent to the last known address of the Complainant on file with the Board of Education. The Level One Administrator shall conduct a hearing on the complaint and render a decision thereon within ten (10) days of the filing of the complaint. The decision shall be dated and a copy shall be sent to the complainant as provided in Section 4 above.

Appendix

SECTION 7. SECOND LEVEL; APPEAL FROM FIRST LEVEL TO CENTRAL OFFICE ADMINISTRATOR. A Complainant dissatisfied with the decision of the first level shall be entitled to appeal to the Central Office Administrator by filing written notice of appeal with the Office of the Superintendent. The appeal must be filed within ten (10) calendar days after the Complainant is notified of the Level One decision. The Central Office Administrator shall record the date of the filing on the appeal and shall notify the Complainant in writing of the time and place of the hearing by mail or hand delivery. The Central Office Administrator shall obtain copies of all minutes, transcripts, documents and other records relating to the complaint and shall conduct a hearing and render decision within ten (10) calendar days of the date of the filing of the appeal, or the hearing may be conducted by any designated representative of the Central Office Administrator who shall promptly submit his or her recommendations and findings to the Central Office Administrator. for final decision. The decision shall be rendered and served on the Complainant and his attorney in accordance with Section 4(h).

SECTION 8. THIRD LEVEL; APPEAL TO BOARD OF EDUCATION. A Complainant or Level One Administrator dissatisfied with the decision of the Central Office Administrator may appeal to the Board of Education by filing written notice of appeal with the Office of the Superintendent. The appeal must be filed within ten (10) calendar days after the date of the decision as provided in Section 4. The Superintendent shall record the date of filing on the appeal, and shall promptly give written notice, by mail or by hand delivery, to the Complainant of the time and place of hearing.

Appendix

The Complainant and the Administrators against whom the complaint is filed or whose decision is being appealed shall be entitled to appear before the Board of Education and be heard. The Board of Education may direct that a pre-hearing conference be held prior to the hearing to identify issues and facilitate presentation. The local board shall conduct a hearing and render its decision in writing within twenty (20) calendar days after the hearing, and perfect service thereof on the Complainant and his attorney, all in accordance with Section 4.

SECTION 9. APPEALS TO STATE BOARD. Appeals from the decision of the local Board of Education shall be governed by the State Board Rule (BCAEA) governing appeals and O.C.G.A. 20-2-1160.

SECTION 10. REPRISALS PROHIBITED. No certificated personnel shall be subjected to reprisals as a result of filing any complaint under this policy. Any reprisals may be referred to the Professional Practices Commission.

SECTION 11. COLLECTIVE BARGAINING DISCLAIMER. Nothing in this policy shall be construed to permit or foster collective bargaining.

SECTION 12. REPEALS. All policies and parts of policies in conflict herewith are repealed.

STATE REF.: Georgia Board of Education Rule GAE (160-1-3-.01); BCAEA (160-1-3-.04)
State Standards B 1; G 8; G 11.1

Appendix

LEGAL REF.: *O.C.G.A.*, 20-2-210; 20-2-790 et seq.; 20-2-940 et seq.; 20-2-989, as amended, 1992; 20-2-989.5 et seq.; 20-2-1160; *Dalton City Board of Education v. Smith*, 256 Ga. 394 (1986)